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No. 643

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 24126—October Term, 1956

UNITED STATES OF AMERICA,

Appellee,

v.

SIMON SILVERMAN, also known as Sid Taylor, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, MARTHA STONE, also known as Mrs. Emil Asher,

Appellants.

ON APPEAL FROM JUDGMENTS OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES AND APPENDICES

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United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 24126—October Term, 1956

UNITED STATES OF AMERICA,

Appellee,

v

SIMON SILVERMAN, also known as Sid Taylor, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, MARTHA STONE, also known as Mrs. Emil Asher,

Appellants.

ON APPEAL FROM JUDGMENTS OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES

Preliminary Statement

These are consolidated appeals from judgments of conviction entered against each of the five appellants on April 20, 1956, in the United States District Court for the District of Connecticut. Appellants were convicted under an indictment charging conspiracy to violate the Smith Act, 54 Stat. 671, 18 U. S. C. 10 (1946 Ed.), 18 U. S. C. 2385 (1948 Ed.) while it remained in force, and thereafter 18 U. S. C. 371 (1948 Ed.), the general conspiracy statute.

Appellants Simon Silverman, Martha Stone, Jacob Goldring and Robert Ekins were sentenced to imprisonment for a term of four years; appellant Joseph Dimow was

sentenced to imprisonment for a term of three years. Notices of appeal were filed on April 20, 1956.[1]

Statutes Involved

Title 18, U. S. C. (1948 Ed.), §2385 is based on Section 2 of the Smith Act, which was included in Title I of the Alien Registration Act of June 28, 1940, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §10). Title 18, U. S. C., §2385 was adopted June 25, 1948, and provides as follows:

"§2385. Advocating overthrow of Government.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruc-

[1] James Tate a co-defendant who was also convicted, and received a suspended sentence, did not join in this appeal. Another defendant, Alfred Marder, was found not guilty by the jury. In the case of the remaining defendant, Sidney Resnick, the jury was unable to reach a verdict.

tion of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof——

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction."

The conspiracy provision found in Section 3 of the Smith Act, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §11), was omitted in the recodification of Title 18, United States Code, because it was covered by the general conspiracy statute, Title 18, U. S. C. (1948 Ed.), §371. Title 18, U. S. C. (1948 Ed.), §371 was adopted June 25, 1948 and provides as follows:

"§371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

Section 3 of the Smith Act, 54 Stat. 671 (18 U. S. C. (1946 Ed.), §11) provided as follows:

"§3. It shall be unlawful for any person to at-

tempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of * * * this title."

The Indictment

The indictment upon which appellants were convicted was returned by a Grand Jury for the United States District Court for the District of Connecticut on March 4, 1955. The indictment charged that from April 1, 1945, to the date of the indictment appellants unlawfully, wilfully, and knowingly conspired with each other and sixteen named co-conspirators[2] and with divers other persons unknown to the Grand Jury to commit offenses against the United States prohibited by the Smith Act in violation of 18 U. S. C. 371, by (1) unlawfully, wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the government of the United States by force and violence as speedily as circumstances would permit.[3]

The indictment alleged the following means of executing the conspiracy: (1) that appellants and co-conspirators would become members, officers and functionaries of and assume leadership over the Communist Party and responsibility for carrying out its policies and activities; (2) that they would cause clubs and other units of the

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[2] The co-conspirators, who are alleged in the indictment were the defendants whose conviction was upheld in *Dennis* v. *United States*, 341 U. S. 494. Also alleged as a co-conspirator was William Z. Foster, National Chairman of the Communist Party, who was indicted in the *Dennis* case, but was not tried because of illness. Also alleged as a co-conspirator was Elizabeth Gurley Flynn, who was convicted in *United States* v. *Flynn*, (CA 2) 216 F. 2d 354, certiorari denied, 348 U. S. 909. Additionally, Andrew Onda, Betty Gannett and Joseph Roberts were alleged as co-conspirators.

[3] Count (2) of the indictment charging the appellants with organizing of the Communist Party was removed from the consideration of the jury by the trial judge (Tr. 8920).

Party to be organized, and would recruit and encourage recruitment of members of said Communist Party concentrating on recruiting persons in key industries and plants; (3) that they would publish, circulate and cause to be published and circulated books, articles, magazines and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence; (4) that they would write and cause to be written articles and directives in Communist Party publications, including "Political Affairs," "Daily Worker" and "The Worker," teaching and advocating the necessity of overthrowing and destroying the Government by force and violence; (5) that they would conduct and cause to be conducted schools and classes for indoctrination of recruits and Party members in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government by force and violence as speedily as circumstances would permit; (6) that they would agree upon and carry into effect detailed plans for the vital parts of the Communist Party to go underground, in the event of emergency, and from such underground position to continue the conspiracy charged; (7) that they would use false names and documents in order to conceal their identities and activities as members and functionaries of the Party; (8) that they would do other and further things to conceal the existence and operations of the conspiracy.

The indictment alleged seventeen overt acts as having been committed by appellants and co-conspirators in pursuance and to effect the objects of the conspiracy.[4]

[4] Originally appellants with the exception of the appellant Stone were indicted on June 4, 1954, under an indictment which was substantially identical with the present indictment. The trial judge dismissed the original indictment on February 23, 1955, on the ground that the grand jury had been improperly impanelled.

Questions Presented

1. Whether the portions of the Smith Act invoked by the indictment in this case, as construed and applied herein, violate the First Amendment, the Fifth Amendment, and other provisions of the Bill of Rights.

2. Whether the conspiracy provisions invoked by the indictment in this case, as construed and applied herein, violate the First Amendment, the Fifth Amendment and other provisions of the Bill of Rights.

3. Whether as to each appellant the evidence was sufficient to sustain the verdict.

4. If there was a conspiracy to engage in illegal advocacy which commenced in 1945, whether that conspiracy continued into the three-year period prior to the indictment, March 1952 to March 1955.

5. Whether there was valid proof of any overt act.

6. Whether appellants' utterances created a clear and present danger of a serious substantive evil.

7. Whether the trial court erred in admitting prejudicial prosecution evidence.

8. Whether Rule 23(a) of the Federal Rules of Criminal Procedure confers upon the Government the absolute right to require that a defendant in a criminal case be tried by a jury.

9. Whether, as construed and applied herein, Rule 23(a) of the Federal Rules of Criminal Procedure violates the Fifth and Sixth Amendments.

10. Whether the Congressional "findings" in the Communist Control Act of 1954 (50 U. S. C. 841) operate as a bill of attainder or deprive appellants of a fair and impartial trial.

The Trial

The trial commenced on October 14, 1955. After ten full court days of inquiry on the voir dire, the jury was impaneled on November 3, 1955. The verdicts of the jury were returned on March 29, 1956, sentences were imposed on April 20, 1956, and within the prescribed period appellants filed Notices of Appeal.

The Government presented its case through witnesses who were:

1) Former members of the Communist Party who had broken with it and testified as experts on Marxism-Leninism, and generally on the aims, purposes and activities of the Communist Party;

2) Former members of the Communist Party who had broken with it and who testified concerning specific Communist Party activities on the part of individual appellants and their co-conspirators;

3) Persons who had joined the Communist Party for the purpose of reporting to the FBI on the activities of the Communist Party, and

4) Persons who had never been members of the Communist Party who testified concerning the use of aliases or conduct of some of the appellants and their co-conspirators as representatives and officers of the Communist Party.

The Government's evidence consisted of oral testimony which was in large measure corroborated by documentary evidence, the authenticity of which is not disputed. Of the appellants, only Robert Ekins testified. During the course of his testimony, Ekins was cited for contempt of court for refusing to answer questions put to him on cross-examination concerning the identity of a third party as a member of the Communist Party. Subsequently, Ekins was given several opportunities to purge himself of the contempt, but declined to do so.

Statement of Facts

A. Communist Party U. S. A.

The Communist Party, U. S. A.,[5] was first formed in the year 1919 and "has since its formation been building upon the basis of principles worked out by the great Lenin." It has continually based itself upon the so-called theory of scientific socialism—Marxism-Leninism (Def. Ex. V).

Marxism-Leninism is basically the writings and teachings of Marx, Engels, Lenin and Stalin, which comprise the so-called "classics" of the Marxist-Leninist doctrine, and their application in this era, the era of monopoly capitalism and imperialism, the era of proletarian revolution in general, the era of the dictatorship of the proletariat (Tr. 3435).[6]

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[5] For the sake of brevity, the Communist Party, U. S. A., will also be referred to hereinafter as the C. P. or C. P. U. S. A.

[6] "Tr." refers to Reporter's Typewritten Transcript of Record. "App. Br." refers to Appellant's Brief. "Gov't. Ex." refers to Government Exhibit. "Def. Ex." refers to Defense Exhibit.

In the Marxist "classics" including "Communist Manifesto" by Marx and Engels (Gov't Ex. 11), "State and Revolution" by Lenin (Gov't Ex. 6), "Problems of Leninism" by Stalin (Gov't Ex. 5), "Foundations of Leninism" by Stalin (Gov't Ex. 4), "History of the Communist Party of the Soviet Union (Bolshevik)" (Gov't Ex. 12), the call for the overthrow and destruction of all capitalistic governments in the world by force and violent revolution is unequivocal (Gov't Ex. 4, p. 56, re applicability to the United States).

B. Dissolution of the Communist Party and Establishment of Communist Political Association.

In 1943, during World War II, a meeting of the leaders of the three Great Powers, the United States, Great Britain and Russia, took place at Teheran. Shortly after this meeting Earl Browder, the General Secretary of the Communist Party, U. S. A., proposed that to carry out the decisions of the "Big Three" at Teheran, the Communist Party of the United States should be dissolved and a political association formed. This new organization, known as the Communist Political Association,[7] was formed in May 1944 and replaced the Communist Party for a period of approximately fourteen months until July 1945 when it was dissolved. The C. P. A. functioned under the leadership of Earl Browder nationally, and in the state of Connecticut under Andrew Onda, President of the Communist Political Association of Connecticut, and a named co-conspirator herein.

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[7] The Communist Political Association will be referred to as the C. P. A. hereafter.

It is significant that William Z. Foster, the present chairman of the Communist Party and a co-conspirator herein, wrote a letter to the members of the National Committee, C. P. A., U. S. A., dated January 20, 1944, in which he opposed the dissolving of the old Communist Party and the founding of the Political Association. This letter was not made known to the general membership of the party and was in fact suppressed at the time of its presentation to the National Committee (Gov't. Ex. 21).

C. The Reconstitution of the Communist Party.

On May 24, 1945 there appeared in the "Daily Worker," the official organ of the Communist Party (Tr. 2901), a translation of an article by Jacques Duclos, general secretary of the French Communist Party. This article was subsequently published in the July 1945 issue of "Political Affairs," the theoretical organ of the Party, as well as in the pamphlet "On the Struggle Against Revisionism" (Gov't. Ex. 21).[8]

The Duclos article condemned the Browder program of class peace exemplified by the C. P. A. as "notorious revisionism" which violated the most fundamental principles of Marxism-Leninism. It analyzed Browder's 1944 report to the National Board which recommended

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[8] This court has reviewed the circumstances pertaining to the reconstitution of the C. P. U. S. A. in *United States* v. *Dennis*, 183 F. 2d 201, affirmed at 341 U. S. 494 and in *United States* v. *Flynn*, 216 F. 2d 354, certiorari denied, 348 U. S. 909. In this brief our discussion of the reconstitution will be only to the extent necessary to establish the background for the evidence which shows its implementation in Connecticut by these appellants and their co-conspirators.

disolution of the Communist Party and the formation of the new Communist Political Association, as well as other statements and speeches made by him in connection with the alleged objectives of the C. P. A. It also dealt in detail with Foster's suppressed letter.

On June 2, 1945, the National Board of the C. P. A., which included named co-conspirators Foster, Dennis, Williamson, Davis, Green and Thompson, adopted a Draft Resolution (Gov't. Ex. 2) criticizing the Browder period as a revision of basic Marxist-Leninist theories. This resolution spoke of "the basic correctness of the sound fraternal, Marxian opinion expressed in the recent article of Jacques Duclos, one of the foremost leaders of the Communist Party of France" (Gov't. Ex. 2).

Prior to the National Convention of the Communist Political Association which was called in July, 1945 to consider the proposals set out in the Duclos article, numerous meetings of the Association were held in Connecticut, at which the Duclos article was discussed (Tr. 1593-4). For example, in June, 1945, there was an organizational-educational meeting of the C. P. A. held in Bridgeport (Tr. 4452-3). At this meeting co-conspirator Andrew Onda, President of the C. P. A. of Connecticut, spoke on the Duclos article and stated that Duclos was absolutely right in his criticism of the American Communist Political Association and that "we must return to Marxism-Leninism." He further stated that Socialism would not be "handed to us on a platter," and urged also that the local clubs study the National Board Resolution (Gov't. Ex. 2) which had been written by the leaders in New York (Tr. 4455).

Again in June, 1945, a mass Political Affairs (Associa-

tion) meeting was held in New Haven, Connecticut (Tr. 4457). The witness Worden C. Mosher[9] testified that Onda again spoke on the Duclos article and the National Board Resolution. In the course of his remarks he accused Browder of revising Marxism-Leninism inasmuch as the C. P. A. policy contained no revolution and the Communists were no longer the vanguard of the working class. Revolution, according to Onda, meant sudden and violent death and the seizure of the Government overnight (Tr. 4459-60). Onda also urged those present to read the "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) (Tr. 6395-6). Saul Kreas, later a member of the State Committee of the Communist Party of Connecticut (Tr. 4458) rose in support of Onda's position and stated in essence that his (Kreas') attitude of violence and revolution had been the correct one; that Communists had gotten further when they met in cellars and called each other "comrade" and that the C. P. A. had made the real revolutionaries "sick to their stomachs" (Tr. 4461).

During July, 1945, a meeting of the C. P. A. was held at IWO Hall in Bridgeport for the purpose of discussing the National Board Resolution. At this meeting Onda gave the position of the National Committee with regard to the National Board Resolution (Tr. 1525-31), and reported that the State Committee of the C. P. A. had gone on record as endorsing the Resolution (Tr. 1587). Onda also stated that the Party had gone through a period of "re-

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[9] Worden C. Mosher joined the Communist Party in 1939 under the name Mike Spencer in order to report its activities to the F. B. I. He held the position of Financial Secretary of the New Haven Section of the Communist Party during the late 1940's (Tr. 4529). He remained a member of the Communist Party until the summer of 1950 when his status as an undercover agent for the F. B. I. became known to the Party leaders, whereupon he was expelled (Tr. 4774-4776).

visionism as to the Marxist-Leninist theories" and that the Communist Party should not have been dissolved, and that a long range policy of collaboration with the capitalistic system is impossible (Tr. 1587-8). This meeting preceded the State Convention of the C. P. A. which was held at the Moose Hall in Bridgeport in the latter part of July 1945 (Tr. 4461, 6398). Approximately one hundred persons including the appellant Goldring attended this convention (Tr. 4462, 6398). Onda again spoke reiterating his position in support of the National Board Resolution and advocating return to the old Communist Party based on Marxism-Leninism. He urged the establishment of Marxist-Leninist classes and other measures to put the Party program into practice (Tr. 4463, 6399). One of the delegates stated that a "peaceful transition to socialism was impossible," and that it was a direct mistake to change the name of the Communist Party to that of the Communist Political Association (Tr. 6400).

Prior to the closing of this convention, resolutions were passed to accept the National Board Resolution, to give the Communist press more attention, and to set up Marxist-Leninist classes throughout the state of Connecticut (Tr. 4464). Andrew Onda was elected to represent the C. P. A. of Connecticut at the National Convention which was to be held July 26-28, 1945 in New York City (Tr. 6408).

In order to review the events which transpired in connection with the National Convention which reconstituted the Communist Party, U. S. A., we turn to the testimony of witness John Lautner a high-ranking Party functionary,[10] who attended that convention.

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[10] Lautner was District Organizer in West Virginia from 1936 to 1940 (Tr. 2350); he had attended the National Training School of the Party in 1930 (Tr. 2362), and 1941 (Tr. 2350); he was a member of the National Review Commission in 1948 and was head of the New York State Review Commission from 1947 to 1950 (Tr. 2351).

Lautner testified that he returned to New York in June, 1945, after the completion of his military service, and went to the National Headquarters of the C. P. A. There he reported to co-conspirator John Williamson, who was at that time, National Secretary of the C. P. A. Williamson urged Lautner to study all the documents relative to the issues at that time, specifically the Duclos article, the Draft Resolution, Foster's suppressed letter and the pre-convention articles appearing in the "Daily Worker" and "The Worker". He was further urged to acquaint himself with all the issues arising out of the Duclos article and was also invited to attend both the State and National Conventions of the Communist Political Association (Tr. 2394-95). Lautner followed these instructions by making a study of the material in the Daily Worker files the substance of which is to be found in Government Exhibit 21.

Prior to the National Convention Lautner had discussions with many of the National Leaders, among whom were co-conspirators Eugene Dennis, Jack Stachel, Bob Thompson and Elizabeth Gurley Flynn[11] concerning the events which had transpired during the time he was in the army (Tr. 2907).

In the latter part of July, 1945, the emergency National Convention of the Communist Political Association was called in New York City (Tr. 2917) to undo the mistakes of the C. P. A. period. About one hundred persons at-

[11] The witness recalled in particular several discussions with Elizabeth Gurley Flynn, in which she criticized the behavior of some of the Party leaders in face of the grave charges leveled against Browder, "and the flip-flop some of these leaders (particularly Dennis and Williamson) made to jump on a different bandwagon," and their lack of self-criticism as to their own role under Browder's leadership (Tr. 2907-14).

tended this convention which was closed to the public and the press (Tr. 2917).[12] Co-conspirator Potash presided as the permanent chairman (Tr. 2934).

The delegates to the convention unanimously adopted the draft resolution (Tr. 2939) and unanimously voted to reconstitute the Communist Party with co-conspirator Foster as its head (Gov't. Ex. 21). Among those elected to the National Committee and in some cases to the National Board of the reconstituted Communist Party were the co-conspirators, Foster, Dennis, Williamson, Stachel, Thompson, Davis, Winston, Green, Winter, Hall and Flynn (Gov't. Ex. 21).

The convention adopted a constitution which dedicated the party "to the principles of scientific socialism, Marxism-Leninism" (Tr. 2933). During the report of co-conspirator John Williamson concerning the proposed new constitution, questions were asked from the floor with regard to the preamble (Gov't. Ex. 21, p. 84; Tr. 2931-32). Specifically a question was asked as to where in the preamble the "dictatorship of the proletariat" was to be found. Co-conspirator Dennis answered this question by stating "It is there. Even the blind can see it" (Tr. 2931-32).

Reports were also made to the convention by William Z. Foster, John Williamson, "Pop" Mindel and others (Tr. 2919).

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[12] The witness' duties in connection with the convention included membership on the Veterans Commission and on "one other Commission", and in addition he was assigned to work with J. Peters who was in charge of security at the convention. Witness' specific duty was to keep unauthorized persons from the secretarial room where all documents were typed, edited, etc. (Tr. 2918).

Co-conspirator Foster, in his report accused Browder of deviating from the Marxian concept of economy; of giving up the vanguard role; of denying the imperialist monopoly nature of capitalism and; of not understanding it. He also blamed Browder for the dissolution of the Communist Party and dealt with the effect that this revisionist leadership had on the Communist movement elsewhere. He called upon the Party membership to restudy the basic principles of Marxism-Leninism, to put forth vigorous efforts to eradicate all vestiges of opportunism and revisionism, and to go back and rebuild the Communist Party U. S. A. (Gov't. Ex. 21, pp. 50, 56, 57, 58, 61, 96, 99; Tr. 2926). Although Browder was present during the course of Foster's report no one rose in his defense as he sat dejected and crying (Tr. 2926).

The substance of the reports made by the co-conspirator Williamson were reported in the pamphlet "On the Struggle Against Revisionism" (Gov't. Ex. 21).

Pop Mindel's report in substance was his own self-critical evaluation as to how, even he, a Marxist-Leninist "scholar" and "theoretician" could be duped by Browder's revisionist policies (Tr. 2932).

The reconstitution of the Party was not merely an isolated phenomenon confined to the National level of the Communist Party. In keeping with the Marxist-Leninist principles of democratic centralism,[13] the various state and district organizations of the Communist Party reconstituted themselves. Andrew Onda returned to Connecticut and attended a membership meeting of the C. P. A. which was held in August, 1945, at Bridgeport, Connecticut (Tr. 6409). He spoke on the National Con-

[13] Discussed in detail *infra* at pages 23-25.

vention stating that it had been agreed there that the main problem was to struggle against Browder's revisionism, to dissolve the C. P. A. and reconstitute the C. P. U. S. A. He urged those present to initiate classes based on the Marxist-Leninist classics (Tr. 6436).

Later in August, 1945, the C. P. A. of Connecticut held a convention at Bridgeport, Connecticut. The main report at this convention dealt with the results of the National Convention and was given by Onda. The report was voted upon and accepted by the State Convention. It was at this convention that the Communist Political Association was dissolved and the Communist Party of Connecticut reconstituted as a Marxist-Leninist Party in conformity with the policy established at the National Convention. The State Convention elected a State Committee[14] and voted to initiate Marxist-Leninist classes in order to counteract Browder's revisionism (Tr. 1598-1612, 4474-75, 6437). Onda also stated that the leaders of the Communist Party who went into the service would retain the same positions upon their return (Tr. 6437).

Subsequent to the Reconstitution Convention in Bridgeport the State Committee began meeting regularly for the purpose of implementing the decisions reached at the State Convention in accordance with the decisions of the national leadership of the Communist Party.

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[14] Those elected included Ronald Marvin Gay, Pearl Russo, Frank Fazekas, Josephine Willard, Neil McGillicuddy, Rose McGillicuddy, Moselle Edwards, Rudy Gillespie, Roy Lieb, Claire Arbiteman, John Holton, Nick Tomassetti, Bill Johnson and Al Harriss (Tr. 1612-14). In addition to those elected at the 1945 convention, Mike Russo and Joseph Roberts became members of the State Committee early in 1946 (Tr. 1619). Appellants Taylor and Goldring became members of the State Committee between 1945 and 1947 (Tr. 1616-1618).

The first State Committee-meeting attended by the witness Gay,[15] was held in August, 1945, at Party Headquarters on Main Street in front of Moose Hall in Bridgeport (Tr. 1619-1620). At this meeting the witness, along with Onda, Neil McGillicuddy, Claire Arbiteman, Roy Lieb, John Holton and Nick Tomassetti, was elected to membership on the State Board (Tr. 1620).[16]

During late 1945 and early 1946, the National Office sent communications outlining methods for study of Marxist-Leninist theory (Tr. 1622), included among these was an "Outline on the Fundamentals of Marxism" (Gov't. Exs. 3 and 3A; Tr. 1663). Discussions were instituted concerning the necessity for keeping the members fully informed on Marxist-Leninist theory and for pushing the sale of Marxist-Leninist literature, which was available to the membership at all branch meetings in Bridgeport as well as at Party headquarters (Tr. 1666-68).[17]

All of the named co-conspirators with the exception of Betty Gannett, Andrew Onda and Joseph Roberts became

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[15] Ronald M. Gay was a member of Communist Party from 1943 until 1948 (Tr. 1524). He was a member of the State Committee of the C. P. of Connecticut from 1945 until 1947 (Tr. 1650); Chairman of the State Youth Commission from August 1945 until 1947 (Tr. 1628) and; State President of the American Youth for Democracy (AYD) in 1945 and 1946 (Tr. 1656).

[16] Subsequently appellant Taylor, Roberts and Russo became members of the State Board (Tr. 1622).

[17] Among the publications purchased and used in connection with this educational program were the following: "Foundations of Leninism," "Problems of Leninism," "State and Revolution," "Imperialism," "What Is To Be Done," "Left Wing Communism," and "History of the Communist Party of the Soviet Union (Bolshevik)" (Gov't. Exs. 4, 5, 6, 7, 8, 9, 12), which were, for the most part, editions of the Little Lenin Library Series (Tr. 1679-80).

members of the National Board and/or National Committee of the Communist Party, U. S. A. at the time of its reconstitution. Betty Gannett later became Organizational Secretary of the Party (Tr. 2119). Joseph Roberts, in addition to being District Organizer in Connecticut, was business manager of the Daily Worker (Tr. 2425-27). Andrew Onda after leaving Connecticut was a Section Organizer in Cleveland, Ohio, and later became National Steel Co-ordinator for the Party (Tr. 2423-25).

In the summer of 1948, another National Convention of the Communist Party was held in New York City (Tr. 3254-55). This convention was held under much the same secretive conditions as was the 1945 convention. The witness Lautner, who was in charge of security at this convention described the elaborate system set up for the identification of the delegates (Tr. 3256-57). No representatives of the American press were admitted to the convention hall, although press representatives of the "Daily Worker" were present (Tr. 3258). The appellants Stone and Ekins were present and all of the District and State organizations of the Communist Party, U. S. A. were represented by delegations (Tr. 3258-7433).

This convention was called for the purpose of making an estimate of the situation prevailing at that particular time (a presidential election year); to work out tactics for the immediate future of the Party based on the recommendations contained in the draft resolution prepared by the National Committee; to review the work of the Party since its reconstitution in 1945 and to elect a National Committee (Tr. 3258-59).

On the recommendation of Eugene Dennis, General Secretary of the Party, the National Committee was

reduced from fifty-five to thirteen persons to avoid giving the Government additional names to prosecute (Tr. 3259-60). The following co-conspirators were elected to the new National Committee: Foster, Dennis, Davis, Gates, Green, Hall, Potash, Stachel, Thompson, Williamson, Winston, Winter and Flynn (Tr. 3260).[18]

Lautner testified that resolutions were discussed and passed at this Convention (Tr. 3262). They were reported in "Political Affairs," for September 1948 (Gov't. Ex. 35) as were the various reports which were made during the course of the Convention.

Dennis, in his report, supported Chairman Foster's position as to the importance of the fullest mastery of Marxist theory and stated as follows:

> "Nineteen hundred and forty-eight, the year of our most severe test, coincides with the 100th anniversary of the Communist Manifesto. Happily, the science of Marxism in which we place our reliance, has itself come through triumphantly in many tests. The twice-told nursery tales of the specter of Communism are being told again, with embellishments. But Communism is no specter. Its solid reality now confronts not only old Europe, but the whole capitalistic world.
>
> History has abundantly confirmed the central theses set forth in the Communist Manifesto, namely, that the struggle of classes is the motive force of history and that '* * * the proletariat * * * must rise to be the leading class of the nation, must constitute itself *the nation*.' And this Marxist teaching has

[18] These persons, with the exception of Elizabeth Gurley Flynn, were members of the old National Board elected at the 1945 Convention (Gov't. Ex. 35).

been enriched and developed further by Lenin and Stalin out of a century of working-class experience.

Lenin wrote that 'the chief thing in the teaching of Marx is the explanation of the world-historical role of the proletariat as the creator of socialist society.' That was in 1913, when it still remained to be proved in practice that a socialist society exists in the Soviet Union. Its creator was the Russian proletariat, led by the Great Bolshevik Party. Now new transitional forms toward socialism are being created by the working class in the people's democracies of Eastern and Central Europe and in the liberated areas of China." (Gov't. Ex. 35, p. 778 et seq.)

An equally pertinent report was that of co-conspirator, Winston (Gov't. Ex. 35, p. 834), wherein he described the results already achieved in the industrial concentration program of the Party (*infra*, p. 31). While pointing out the growth of the Party since 1945 he emphasized that there was much that had to be done towards the full organization of the Party.

Also discussed and approved at the 1948 Convention were plans for a new type youth organization to be set up under the Party leadership. Reports on the proposed organization were made by co-conspirators Betty Gannett and Robert Thompson (Tr. 3264-65). The question of a new youth organization was discussed in a youth panel meeting during the convention, and a report was made to, and approved by, the entire convention. This gave birth to a new Communist youth organization which was to be known as the Labor Youth League (LYL) (Tr. 3265-66). (*Infra*, p. 26).

D. Organizational Structure of Reconstituted Communist Party.

The organizational structure of the Party, including a detailed breakdown of its lowest echelons, is graphically illustrated in the organization chart (Gov't. Ex. 34, Appendix A) introduced and described by the witness Lautner (Tr. 3129). Without detailing this testimony or attempting to fully describe the chart, it showed that the Communist Party, under the direction and control of the National Committee, and National Board, has a comprehensive network of districts, sections and clubs or branches throughout the entire country. The organization is so set up that the State or District organization is responsible to the National Organization, the County or City Organization is responsible to the State or District Organization and the sections are responsible to the County or City Organization. The basic units of the Party are the community clubs, the industrial clubs, and the shop clubs.

In addition, there exists on the national level a number of commissions, such as the Organizational Commission, Labor Commission, Educational Commission, Negro Commission, Review Commission and others. All of these commissions have their counterparts on the state or district level, with the state or district officers varying in number according to the size and importance of the particular state or district.

The duties of the various State and District commissions were analogous to those duties performed by their National counterparts. All of the activities of the commissions and their secretaries were supervised by the organizational commission of the State or District Com-

mittee. Therefore, the responsibility for carrying out Party policy in specific fields such as Youth, Negro, Education and the like, was delegated to specific personnel, who were at all times under the close supervision of the State or District Committee (Tr. 4142-44).

1. Democratic Centralism.

The appellants herein are Party leaders on the District or State rather than the National level.[19] They were the leaders of the conspiracy in Connecticut and it was obligatory upon them, under the principle of democratic centralism, to carry out in their District the decisions emanating from the National leadership. We have seen that such was the case with the reconstitution of the Party and this will be further amplified herein in connection with the discussion of the educational, concentration and security activities of the Party.

The principle of democratic centralism is described in the "History of the Communist Party Soviet Union" (Gov't. Ex. 12) as follows:

> "The Sixth Congress adopted new Party Rules. These rules provided that all Party organizations shall be built on the principle of democratic centralism.
> This means:
>
> (1) That all directing bodies of the Party, from top to bottom, shall be elected;
>
> (2) That Party bodies shall give periodical accounts of their activities to their respective Party organizations;

[19] With the exception of the appellant Stone who was an alternate member of the National Committee of the Communist Party U. S. A. (Tr. 6496; Gov't. Ex. 52) and one of its top leaders particularly in the underground apparatus. (Tr. 5267; 5280).

(3) That there shall be strict Party discipline and the subordination of the minority to the majority;

(4) That all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members." (Gov't. Ex. 12, p. 198.)

That this is not an archaic principle of the Bolshevik Communist Party but governs the activities of the American Communist Party nationally and locally is apparent from the record. In his report to the emergency National Convention in 1945 co-conspirator Williamson, while discussing democratic centralism, said:

"But once decisions are made in the higher committees, these decisions become the line of activity for the membership as a whole." (Gov't. Ex. 21, p. 79.)[20]

The witness Lautner explained democratic centralism and its application to the Communist Party as follows:

"All decisions made by the National Convention and mandated to the National Committee between conventions are obligatory—were obligatory on all members in the Communist Party in the United States. Even if one did not agree with some of the decisions made on higher levels, nevertheless, they were to carry it out because that was the only way a disciplined party could function where there was unity of will to act as one when the higher body, the National Committee, made a decision in relation to any line of activity in the Communist Party." (Tr. 3151).

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[20] Other references to the principle of democratic centralism and Party discipline may be found in the following: "Outline on Fundamentals of Marxism" (Gov't. Ex. 3, p. 31), and "Program of the Communist International" (Gov't. Ex. 14, pp. 87, 88).

The application of democratic centralism locally was dramatically illustrated at a meeting of the Hill Branch of the New Haven C. P. in November, 1949, when Michael A. Russo (who was then State Chairman of the Communist Party of Connecticut [Tr. 4629]), recommended Alfred Marder for chairman of the New Haven Section Committee. One party member voiced an objection to this procedure whereupon Russo sprang up and stated that regardless of the vote Marder would be put in office. He stated further that even if all voted against his (Russo's) recommendation, the action would still carry (Tr. 4631-37).

Also worthy of note in this connection is the testimony of the witness Pires,[21] who was instructed by his superiors in the Party to concentrate his activities in the Niles-Bement-Pond plant. The witness was informed that these orders had been received from Sid Taylor himself and the witness had "to carry them out" (Tr. 6303).

2. Recruiting and Education of Youth for the Communist Party.

One of the principal concentration efforts by the Communist Party has been directed toward the recruiting of youth into the Communist movement. To accomplish this objective the Party has organized, sponsored and controlled youth organizations under various names which have, in fact, functioned as the youth arm of the Party itself.[22]

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[21] Antonio J. Pires joined the Communist Party in 1952 for the purpose of reporting its activities to the Federal Bureau of Investigation (Tr. 6172, 6324).

[22] In this category was the Young Communist League during the thirties (Tr. 3269-70), which was succeeded by the American Youth for Democracy, a broader based Marxist-youth organization (Tr. 3272), which in turn was succeeded by the Labor Youth League in 1949 (Tr. 3273).

The witness Lautner, while outlining the organizational structure of the Party, pointed out that among the permanent commissions on the national level was the Youth Commission (Gov't. Ex. 34-A, Tr. 3147). He also stated that each State or District level had, as a part of its organizational structure, a Youth Commission (Gov't. Ex. 34-A, Tr. 3143).

During the years 1947 and 1948 the witness Lautner, who was intimately associated with the work of the Youth Commission of the New York Party, attended numerous meetings at which discussions were held with regard to the youth program of the Party (Tr. 3279). At these meetings leaders of the National and New York Youth Commissions gave reports to the State Organizational Commission concerning the formulation of policies for the organization of a new youth group (Tr. 3280-81). These discussions and plans were in accordance with the proposals which had been adopted by the 1948 National Convention of the Communist Party (Tr. 3264).

In early 1949 Leon Wofsy, National Youth Director of the Communist Party (Tr. 3281), and Lou Diskin, New York State Youth Director (Tr. 3281-82), actively participated in youth discussions. As a result, the Labor Youth League, a youth organization directed and organized by members of the Communist Party, was founded in Chicago in 1949 (Tr. 3282). All of the persons receiving assignments to organize the LYL and all those who actually participated in its organization were Party members (Tr. 3284). After the founding convention in Chicago, Lou Diskin gave reports to the New York State Organizational Commission concerning the organization of the Labor Youth League (Tr. 3280-81).

The implementation of the National Communist Party policy with respect to youth organizations in Connecticut closely conformed with the program on the national level. The appellant Taylor, presently State Chairman of the Communist Party of the State of Connecticut, was the State Youth Organizer for the Young Communist League in Connecticut in 1941, and in August of that year recruited the witness Rowena Paumi[23] into the Young Communist League (Tr. 6351-52). In addition to Taylor, the witness also identified the appellant Goldring as having been active in the Young Communist League in 1941 (Tr. 6348).

The interrelation between the Young Communist League and the Communist Party is made manifest by the fact that in inviting the witness Paumi to attend a Young Communist League school in 1941, Taylor advised her that the Communist Party had selected her so that she could become a better leader of the Communist Party in the future (Tr. 6352-53). At these classes the teacher was Joe Clark, a representative of the National Office of the Young Communist League (Tr. 6358). It is significant that the teacher originally scheduled to instruct the students together with Clark was George Siskind. Siskind was a teacher at the 1938 and 1941 National Training School of the Communist Party (Tr. 2092, 2607), and was assigned by the National Committee of the Party in 1938 to head the National Training School

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[23] Rowena Rosemary Paumi joined the Communist Party in August, 1941, after a period of membership in the Young Communist League (YCL) (Tr. 6348). She became inactive early in 1942 (Tr. 5543). At the suggestion of the F. B. I., she was reinstated in the Communist Party during 1943, remaining active until the fall of 1945. She was inactive until 1948 at which time she began once again to report on Communist Party activities to the F. B. I. (Tr. 6438). She remained a Communist Party member until she testified in the present case (Tr. 6348).

(Tr. 2092). This same Siskind also taught educational classes of the Communist Party in Bridgeport in 1941 (Tr. 6370), and was the principal instructor at the nine-day school of the Communist Party of the State of Connecticut which was held in the summer of 1947 (Tr. 5543).

The Communist Party's domination of the youth organizations is also made clear by the post-reconstitution activities of the American Youth for Democracy in the State of Connecticut. The witness Gay, who was chairman of the State Youth Commission of the Party from August, 1945 until sometime in 1947, described the Commission's function. He said that they accepted and fully carried out the programs outlined by the State Convention with respect to youth (Tr. 1628).

Shortly after the 1945 reconstitution convention in Connecticut, the Youth Commission discussed whether the American Youth for Democracy should be reactivated to carry out the Party's program with regard to youth or whether it would best be carried out by an organization along strictly Communist lines (Tr. 1649). The Youth Commission decided that the aims of the convention could best be fulfilled by an organization of strictly young Communists, and this decision was personally presented to the State Committee of the Communist Party, by the witness Gay (Tr. 1651-52).

After discussions by the State Committee in late 1945, the matter was referred to the National Office of the Communist Party for decision. Carl Ross, a National Official of the AYD was sent to Connecticut to discuss the matter with the Youth Commission members (Tr. 1653-54). At this discussion, Ross identified himself as having been sent from the National Committee of the

Communist Party (Tr. 1654-55). The Commission made known its position to Ross, who stated that such position did not conform to the national policy of the Party and that the National Party wanted the AYD continued as the best means of broadening the base of the Party among the youth of the country (Tr. 1654). As a result of these discussions the Youth Commission agreed to accept the program of the National organization and activate the AYD (Tr. 1655). The witness Gay, who was then head of the State Youth Commission, became chairman of the newly activated AYD organization in Connecticut (Tr. 1656).

In reviving the AYD Gay testified that he received assistance from Party members who gave him a large number of names of young people who might be interested in joining the youth organization (Tr. 1657). In this connection the appellant Taylor told Gay that Al Marder, who had previously worked in the youth movement, was getting out of the Army soon and he would help reestablish the New Haven American Youth for Democracy Club (Tr. 1658).

A graphic illustration of the close relationship between the Labor Youth League and the Communist Party in the State of Connecticut is given by the testimony of the witness Harold Mosher[24] concerning two meetings of the League in August 1950. At the first of these meetings, it was stated by Sidney Resnick that the Communist Party and the Labor Youth League would continue to function even though they were outlawed (Tr. 5699-5700). At the second August meeting, Resnick discussed the LYL

[24] Harold W. Mosher joined the Communist Party in 1947, for the purpose of reporting its activities to the Federal Bureau of Investigation. He remained an active member of the Party until August 1950, during which time he held various offices in the Youth Branch of the C. P. of New Haven (Tr. 5474-5480).

going underground and the various security measures that should be adopted (Tr. 5702). He also discussed the Mundt-Nixon bill and how the Party members should react in the event that they were contacted by the FBI with respect to registering under this legislation (Tr. 5702).

It is also worthy of note that many of the principal leaders of the Communist Party are persons who have served in the youth arms of the Party. Among these are the co-conspirators John Williamson, Robert Thompson, Henry Winston and Gil Green (Gov't. Ex. 52; Tr. 2406, 2411, 2413, 2415), all members of the National Committee.

Noteworthy, also, is the fact that in June, 1950, Resnick had a conversation at the Labor Youth League headquarters with one Lou Diskin, who was identified as a representative of the National Office of the LYL (Tr. 5696). This is the same Lou Diskin who, according to the witness Lautner, reported to the Organizational Commission of the Communist Party of the State of New York with reference to the efforts of Party members to organize the LYL in Chicago in 1949 (Tr. 3280-3281). During this conversation, Diskin made statements with reference to the readiness of the Communist Party all over the world to revolt in the event of a third world war with Russia, to which Resnick expressed his agreement (Tr. 5698).

Thus the importance given to the regimentation of youth by the Communist Party has been clearly demonstrated. The youth leaders are obviously handpicked, not only on the basis of their Marxist-Leninist understanding and their dedication to the Communist Party, but for their organizational ability as well. And in addition, it is established that the youth question in Connecticut has received the closest of supervision, not only from the local

Party leadership but from the national leadership of the Communist Party as well.

3. Policy of Concentration in Basic Industries.

One of the principal objectives of the 1945 National Convention was the reinstitution of the industrial concentration policy of the Communist Party. The need for recruiting Communist Party members in the key basic industries was emphasized in a report by John Williamson to the Convention:

> "To influence successfully the political life of the nation, the center of gravity of the Communist organization should be in the main cities and especially in the centers of large industry. This means our strongest roots must be among the industrial workers—particularly in the steel, auto, coal, marine, electrical equipment, shipbuilding, and metal industries." (Govt. Ex. 21, page 74)

The industrial concentration program was also part of the platform of the 1948 National Convention as evidenced by Henry Winston's report (Govt. Ex. 35) which in turn was an important source material for a National outline entitled "Study Course on the Communist Party, The Working Class and Industrial Concentration, Issued by National Education Department, Communist Party" (Govt. Ex. 28). This outline widely distributed was identified as having been disseminated in New York (Tr. 3108) as well as in Connecticut (Tr. 4609, 5709). Source material for this outline was "The Communist Manifesto", "Foundations of Leninism", "What is to be Done", "History of the Communist Party of the Soviet Union", all of which were exhibits in the case, as well as articles by such national leaders of the Communist

Party as co-conspirators Foster, Williamson and Fine. These articles appeared in the various editions of the "Political Affairs" magazine ("a magazine devoted to the theory and practice of Marxism-Leninism" Gov't Ex. 35).

The outline (Gov't Ex. 28) describes the "Communist fight for the attainment of the immediate aims, for the enforcement of the momentary interests of the working class; but, in the movement of the present, they also represent and take care of the future of the movement (Communist Manifesto)" (page 8). The Party is to perform its vanguard role by basing "all its policies and actions on firm foundation of Marxism-Leninism" (page 9). Thus the Communist Party, in the words of Stalin appearing in "Foundations of Leninism", "is the General Staff of the proletariat" (Gov't Ex. 4, Chapter VIII, page 110). "But it does not by any means follow from this that the Party can be regarded as an end in itself, as a self-sufficient force. The Party is not only the highest form of class association of the proletarians; it is at the same time an instrument in the hands of the proletariat for achieving the dictatorship where it has not yet been achieved and for consolidating and expanding the dictatorship where it has already been achieved." (Gov't Ex. 4, page 117).

The obvious purpose behind the Party concentration in key basic industries, therefore, is to facilitate the overthrow of the Government of the United States by being in position to paralyze the Nation's economy at the propitious moment. As co-conspirator Winston pointed out in his report:

> "While we must strengthen the Party in all basic industries, we must particularly select for major concentration such industries as steel, auto, mining, mari-

time, electrical and railroad. Within these industries we must pursue a policy of concentration—with special consideration for the most underpaid sections of the workers, the unskilled and semi-skilled. In some districts, additional industries may be selected, as for instance, textile in the South, and New England; in Ohio, rubber in addition to steel and mining, etc." (Gov't Ex. 35, page 840)

During the period of late 1945 through 1947, the State Committee discussed the methods of industrial concentration (Tr. 1687-88). The appellant, Taylor, participated in these discussions which were usually based on communications from the National office of the Communist Party emphasizing the necessity of organizing workers in the basic industries (Tr. 1688-89).[25] The State Committee also urged the breaking down of the Party branches along industrial lines such as the club at General Electric in Bridgeport (Tr. 1690-1691). Internal union affairs were discussed in Party caucuses at which non-union Party members were present and in which the best means of "pushing" the interests of the Communist Party in the union were worked out (Tr. 1699-1700). In addition, discussions were had as to the means of getting Communists in positions of officership in the union and recruiting other workers for the purpose of carrying out the Communist Party program (Tr. 1722).

The modus operandi of the Party and of the appellants with regard to industrial concentration was graphically

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[25] In 1953, the appellant Stone not only instructed the Communist Party leadership in Connecticut to infiltrate secret Party members in the basic industries but emphasized the importance of getting them into such key departments as the maintenance shops and the power house at the General Electric plant at Bridgeport, Connecticut (Tr. 5120-5124).

described by the witness Gay in response to a question on cross-examination. He explained that:

"In order to understand the reason how a Communist can control or sway the opinions of the policies of a union, you must understand that each of the Communist Party members concentrate on a specific group of people within his particular area constantly feeding them the type of information which would tend to make these people support their policies.

The Communists themselves are tremendously active in the union, it is in support of the people's everyday working problems. This support, this activity and support of these people's everyday requirements almost in all cases tend to make these people become supporters of these people as individuals. When they have accumulated a set of from five to ten to fifteen people who believe in them as individuals, and have been able to convince them of—convince them that their internal union policies are correct and that they are fighting for the position of the people, they are in many cases able to persuade them to come to the union election, the union meetings, and at the union meetings with a relatively small number of members present it requires a very small percentage of the actual membership to put over as an official position of the union the specific policies that the Communist Party wants to put over.

Normally, I would say that there would be from, varying between one hundred to two hundred members at the normal membership meeting, that the thirty-five members of the Communist Party were each able to bring from three to ten people to this membership meeting with a fairly limited amount of discussion on the floor and they were very often able

to succeed in putting over the program that they happened to be wanting to put over at the time.

During the course of union elections, these same people, Communist Party members who at General Electric were scattered from one end of the company to the other, concentrated on going to these same people, indicating to them the amount of work that they had done in their behalf during the past year, and convincing them that other people whom these people might not necessarily know, were interested, and were going to work in their behalf as well as they had.

On election days, every Communist Party member was assigned the responsibility of seeing that those people voted in the election, received a card with the slate outlined on it that this particular Communist wanted the member to vote for, and, before work was over, we always made sure that every person that we thought would support our slate of candidates voted in that election" (Tr. 1885-87).

Thus the industrial concentration program was directed toward the infiltration of trusted Party members into key positions in key unions and industries. Additionally, the testimony of the witnesses Kent and Pires specifically points out the continued emphasis on the industrial concentration program by these appellants during the indictment period (Tr. 5120-5124; 5153; 5225; 6239, 6240-41, 6305).

4. Clandestine Nature of the Party and the Party's Underground Apparatus.

Lenin pointed out that "during the period of reaction they should learn how to retreat properly, how to go

underground, how to preserve and strengthen the illegal party, how to make use of legal opportunities of all legally existing organizations, especially mass organizations, in order to strengthen their connections with the masses" (Gov't Ex. 12, p. 132).

In line with the above quoted instructions from Lenin, the co-conspirators and these appellants made plans to place the leadership of the Party underground. These plans were carried out, nationally and locally.

The witness Lautner testified to several conferences he had had with the co-conspirator Robert Thompson in the summer of 1948 concerning the necessity for taking the Party underground (Tr. 3307, 3313). Thompson outlined in general terms security measures to be taken by Party members. Among the measures to be taken by Party members were refraining from telephoning from the Party building, checking on mail going out of the building, establishing an elaborate guard system for Party headquarters and supplying functionaries with copies of the First and Fifth Amendments of the United States Constitution as well as the telephone numbers of attorneys for use in case of arrest (Tr. 3310-11).

At one of the conferences which was held under strict conditions of secrecy, Thompson announced that the meeting was being held to work out plans for going underground so that the Party could function under any and all conditions and insure a continuity of leadership (Tr. 3314-15). Those present discussed a "system of threes" which had been used very successfully in the European countries. Lautner explained in detail how the "threes" system operated. One of the primary laws of this structure is that it is a one-way proposition, with all decisions emanating from the top. A lower level cannot, under any conditions,

get in touch with a higher level of the structure (Tr. 3315-16). It was decided that the "three system" should be built to the fourth level within two months (for complete discussion of the system, see Gov't. Ex. 36(A); Tr. 3319-3337). Thompson pointed out that plans for security as well as for the underground structure had been discussed at a National Committee meeting at which William Z. Foster gave the report (Tr. 3336).

The system was actually put into operation in New York State (Tr. 3337).

Thompson, in his description of the system, pointed out to Lautner that members on the bottom rung of the structure would have only limited contact with other Party members. He explained that these members would only have contact with the other two persons in his group, and their contact person on the next highest level, so that if any member got into trouble, he would not be able to identify more than three other Party members. Those on higher levels would, of course, know an additional member or two since they would be in contact with a unit below as well as one above (Tr. 3323-3325).

That the underground "system of threes" was put into effect within the Communist Party of Connecticut by these appellants is uncontroverted. The witness Pires was assigned to a three-man group at the Niles-Bement-Pond Plant in West Hartford (Tr. 6327). Pires attended meetings with the three-man cell. Their higher contact was Victor Vittoria, Secretary of the Communist Party of Hartford (Tr. 6238-39). After the witness had been in the cell for about six months, he was informed that he, himself, was going to be put in charge of a new three-man cell

(Tr. 6253). The explanation given for the use of the three-man cells in Connecticut was as follows:

> "If the Federal Bureau of Investigation should break in, it would be a cell of only three, there wouldn't be others involved, and it is also for security, for security for the Party to have only three in a cell because if there should be an F. B. I. spy in the organization, he only knows of three in a cell, and it might be another cell across the street, so that he wouldn't know about it" (Tr. 6249).

In addition to the testimony of the witness Pires, the witnesses Kent[26] and Paumi testified to the extensive security measures taken by the Party leaders to conceal their activities (Tr. 5061-61, 5086, 5096, 5121, 5141-46, 5152-57, 5207, 5221, 5256-60, 5262-63, 5268-74, 5276-79, 5297-99, 6458-6460, 6463-6465, 6505-6521).

Not only did these appellants wrap themselves in a veil of secrecy, but they did so with the avowed intention of circumventing the law. The appellant Taylor stated that under the instructions of the National office of the Party he and the other leaders were required to alter their appearances (Tr. 6507). He also stated that the missing National leaders who had jumped bail and were fugitives (from justice) had jumped bail because they believed strongly in the advent of socialism and that they could

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[26] Harold A. Kent originally joined the Communist Party of Connecticut in 1949 (Tr. 5301). In 1952 he reactivated his membership for the purpose of reporting its activities to the Federal Bureau of Investigation (Tr. 5056). He was a member of the City Committee of the Communist Party of Bridgeport; a member of the State Negro Commission; and, became a member of the concealed State Board of the Communist Party of Connecticut in 1954 (Tr. 5062-5063).

not further their activities to that end while in jail (Tr. 6507-09). In referring to the missing leaders in Connecticut, Taylor named, among others, the appellants Ekins and Dimow (Tr. 6519). This testimony is corroborated by the testimony of several witnesses who were net Party members but who identified these appellants and other Party members as having used fictitious identities, and other measures to conceal their whereabouts (Tr. 6090, 6134, 6143, 6147, 6151, 6154, 6157-58).

The clandestine nature of the activities of the appellants and their co-conspirators established the illicit nature of the conspiracy; the fact of appellants' participation in its illicit operations and; the fact that these appellants entered into the conspiracy and carried on their activities with full knowledge that the objectives of the conspiracy were to circumvent the laws of the United States.

E. Advocacy of Forcible Overthrow.

As indicated by the preamble to its constitution, the Communist Party bases itself upon the principles of Marxism-Leninism (Gov't. Ex. 17, p. 3). That appellants and other Party leaders in fact taught and advocated the principles of Marxism-Leninism is uncontradicted.[27]

The resolution adopted at the Emergency National Convention in 1945 (Gov't. Ex. 21) stated that "the correction of our revisionist errors demands the immediate

[27] The appellant Ekins described the Marxist-Leninist classics as the "Horse's Mouth". He stated that all questions which arose as to the interpretation of Party doctrine were resolved by going back to the basic writing of Marx, Engels, Lenin and Stalin (Tr. 7122).

reconstitution of the Communist Party and guaranteeing the re-establishment of the Marxist content of its program, policies and activities" (p. 96). It then provided that the Party "must wage a resolute ideological struggle on the theoretical front, enhancing the Marxist understanding of our entire organization and leadership" (p. 99).

William Z. Foster, in his report to the same Convention, castigated Browder for his "head-on attack upon the whole body of Marxist-Leninist principles" and for his "scorn" for the "Marxist-Leninist books and formulas." He further complained that "Browder would have us throw away the Marxist-Leninist classics" (Gov't. Ex. 21, p. 57). With the decks thus cleared, Foster told the Convention "[a]s never before we must train our Party in the fundamentals of Marxism-Leninism" (Gov't. Ex. 21, p. 61).

Co-conspirator Williamson then took up the cudgel. He reported that a "[p]rerequisite for a Communist Party is the mastery of Marxist-Leninist theory" (Gov't. Ex. 21, p. 72). He warned the membership to "never forget the emphasis of Lenin that 'the role of the vanguard can be fulfilled only by a Party that is guided by an advanced theory' ", and that, "[e]ducational work is not mere study groups established for the sake of study, but is aimed at equipping our members with the knowledge and experience to know how, in the course of all struggles, to adopt the most effective strategy and tactics. . . ." (Gov't. Ex. 21, p. 73).

The report of Max Weiss to the plenary meeting of the National Committee in July, 1946 (Gov't. Ex. 32), is primarily concerned with "The Struggle On The Ideo-

logical Front", as its title indicates. According to Weiss, Marxism-Leninism "guides the Party and the masses in the struggle" (p. 838). He affirmed "the Marxist-Leninist analysis of the United States as an imperialist country . . . the most powerful imperialist country in the world" (p. 841) and decried "the attempt to portray the Soviet Union as an expansionist" (p. 842). He called the latter statement "Hitlerian slander," saying that the "Socialist Soviet Union is by its very nature anti-imperialist" (p. 842). The entire Party, stated Weiss, must be equipped "with the science of Marxism-Leninism" and this "struggle on the ideological front" must be guided by the Party "beginning with the National Committee and National Board, on down through the State Committees, State Boards and Section Committees" (pp. 848, 849). The Party "must organize the training and development of a cadre for educational work," including "a corps of educational directors in the districts, sections and branches" and "specialist—educational directors, press directors, literature agents, teachers . . ." (p. 850).

Weiss then called the attention of the group to the coming centennial of Marxism—100 years since the Communist Manifesto was written (p. 850). This centennial was to be the occasion for action under the slogan: "Bring Marxism-Leninism back to the masses!" (p. 851). He urged the institution of classes in the principles of Marxism (p. 851). As a part of the program he asked the Party to:

> "Organize for mass sale the chief Marxist classics: *The Communist Manifesto; Socialism—Utopian and Scientific; Wage, Labor and Capital; Value, Price and Profit; Lenin's Imperialism; Stalin's Founda-*

tions of Leninism; History of the C. P. S. U." (p. 851).

In the magazine "Political Affairs", for the month of December, 1949, there appears an article by Alexander Bittleman (Gov't. Ex. 38).[28] This particular edition of the magazine, as did all editions of "Political Affairs," received wide distribution throughout the Party generally as well as in Connecticut (Tr. 3354-56, 4645, 4650).

The magazine on its front cover carries the picture of J. Stalin who is characterized as "The Lenin of Today" and who is eulogized on the occassion of his seventieth birthday. This document, as do many of the Government exhibits, establishes the close ideological relationship between the Communist Party of the United States and the motherland of all Communists, the Soviet Union.

Concerning Stalin's writings Bittleman wrote:

> "A theoretical contribution of Stalin, which, like the *Foundation of Leninism* and his other theoretical works, ranks with the fundamental theoretical and philosophical works of Marx, Engels and Lenin, is the *History of the Communist Party of the Soviet Union.* The History is a fountain-head of Marxist-Leninist knowledge, theory, ideology, strategy, tactics, principles of organization. It is a guide to Marxist-Leninist action. It embodies the theoretical and programmatic positions of Marxism-Leninism" (Gov't. Ex. 38, p. 8).

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[28] The author of this article was a member of the Central Committee of the Communist Party in the 1930s (Tr. 2395-2477), an instructor at National Training Schools (Tr. 2167) and a member of the National Committee of the Communist Party after 1945 (Tr. 2945-48).

Bittleman cites several of Stalin's exceptionally fruitful political conclusions, including such as "one must be a revolutionist not a reformist; one must follow and practice the policy of class struggle in all fields, not of class collaboration" (p. 8). He then points out that "Lenin, Stalin created and built the Bolshevik Party, the party of a new type . . . without which the proletariat cannot liberate itself from capitalism," (p. 8) and quotes the following from "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) which states:

> "The history of the Party teaches us, first of all, that the victory of the dictatorship of the proletariat, is impossible without a revolutionary party of the proletariat, a party free from opportunism, irreconcilable toward compromisers and capitulators, and revolutionary in its attitude toward the bourgeoisie and the state power (p. 353)" (Gov't. Ex. 38, p. 8).

There is no question that the so-called "classics" of Marxism-Leninism have been circulated, studied and taught in the Party generally as well as in the State of Connecticut (Tr. 7507) or that they contain the principles which guide the activities of the Party. This fact is evidenced by the testimony of each Government witness from Gay (Tr. 1668-1670) to Paumi (Tr. 6354, 6858, 6859) with the exception of those witnesses who were not in the Party in Connecticut. There was evidence concerning Marxist educationals in the clubs as well as more formalized classes with specially-trained instructors.

Additionally, there is evidence of the dissemination of the National Outline on the Fundamentals of Marxism (Gov't. Exs. 3, 3-A) within the State (Tr. 1662, 1663, 4970). This is the same outline that was used by the witness Lautner in Party schools in New York City and which was

obtained by him at Communist Party headquarters in New York (Tr. 2670, 2690, 2858, 2865, 3199, 3369, 4106).

There was uncontradicted evidence concerning educational classes conducted by the appellant Dimow (Tr. 4519-21, 4699, 4764) and to the fact that an outline, "Fundamentals of Marxism" (Gov't. Ex. 47) was distributed by Dimow and used by the students in his classes (Tr. 4704). Significantly the local outline (Gov't. Ex. 47) closely follows the context of the National Outline (Gov't. Exs. 3, 3-A) although it is more abbreviated in form.

There are numerous references in the record concerning the availability of such Marxist-Leninist sources as the Little Lenin Library (see, e.g. Tr. 6538, where in January, 1953, a Party member was awarded a set of the Little Lenin Library for obtaining Daily Worker subscriptions). The contents of these books clearly and explicitly call for the forcible overthrow of the existing capitalist state and for the shattering of the governmental apparatus.[29] Pertinent excerpts from all of them were read by the Government in the course of its case. At this point it would seem appropriate to recall a few passages from those excerpts.

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[29] See *United States* v. *Dennis*, 183 F. 2d 201, 206, where Judge Hand stated:

> "There was abundant evidence, if believed, to show that they were all engaged in an extensive concerted action to teach what indeed they do not disavow—the doctrines of Marxism-Leninism. These doctrines were set forth in many pamphlets put in evidence at the trial, the upshot of which is—indeed an honest jury could scarcely have found otherwise—that capitalism inescapably rests upon, and must perpetuate, the oppression of those who do not own the means of production; that to it in time there must and will succeed a 'classless' society, which will finally make unnecessary most of the paraphernalia of government; but that there must be an intermediate and transitional period of the 'dictatorship of the proletariat,' which can be established only by the violent overthrow of the existing government, if that be capitalistic."

There can be no doubt concerning the meaning of such words as Stalin's in "Foundations of Leninism" (Gov't. Ex. 4, p. 56):

> "In other words, the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world. Therefore, Lenin is right in saying: 'The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one.'"

Stalin scornfully dismissed any suggestion of peaceful proletarian revolution when after characterizing the revolution, he said in "Problems of Leninism" (Gov't. Ex. 5, pp. 19, 20):

> "Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?
>
> Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else open and gross repudiation of the proletarian revolution."

Lenin's words in "State and Revolution" that "the replacement of the bourgeois by the proletarian state is impossible without a violent revolution" (Gov't. Ex. 6, p. 20), do not mean that the road to political power is through the free votes of the citizens. Nor can these

words be dismissed as anything less than a program for resort to force and violence:

> "Marx and Engels taught that it was impossible to get rid of the power of capital and to convert capitalist property into public property by peaceful means, and that the working class would achieve this only by revolutionary violence against the bourgeoisie, by a proletarian revolution, by establishing its own political rule—the dictatorship of the proletariat—which must crush the resistance of the exploiters and create a new classless Communist society." (History of the C. P. S. U., Gov't. Ex. 12, p. 9).

To negate any inference that America is to be excepted from the general pattern of world revolution, in addition to the oral testimony of the prosecution's witnesses we have this statement in "Foundations of Leninism" (Gov't. Ex. 4, pp. 55, 56):

> "Marx's qualifying phrase about the Continent gave the opportunists and Mensheviks of all the countries a pretext for proclaiming that Marx had thus conceded the possibility of the peaceful evolution of bourgeois democracy into a proletarin democracy, at least in certain countries outside the European continent (England, America). Marx did in fact concede that possibility, and he had good grounds for conceding it in regard to England and America in the 'seventies' of the last century, when monopoly capitalism and imperialism did not yet exist, and when those countries, owing to the special conditions of their development, had as yet no developed militarism and bureaucracy. That was the situation before the appearance of developed imperialism. But later, after a lapse of thirty or forty years, when the situa-

tion in those countries had radically changed, when imperialism had developed and had embraced all capitalist countries without exception, when militarism and bureaucracy had appeared in England and America also, when the special conditions for peaceful development in England and the United States had disappeared—then the qualification in regard to those countries necessarily could no longer hold good.

* * * Today, both in England and in America, the 'preliminary condition for every real people's revolution' is the smashing, the destruction of the 'ready-made state machine' (brought in those countries, between 1914 and 1917, to general 'European' imperialist perfection)."

In the political sense the term "revolution" used in Marxist-Leninist writings refers exclusively to an event of violence. Lenin quoted Engels' definition of "revolution" as follows:

"* * * Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i. e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries * * *" (Gov't. Ex. 6, p. 53).

And we should not overlook the words of Marx and Engels in the concluding paragraphs of the Communist Manifesto:

"The Communists distain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrew of all existing social conditions. Let the ruling classes tremble at the

Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win.

Workingman of all countries, unite!" (Gov't. Ex. 11, p. 44).

That a violent revolution as distinguished from a peaceful transition to socialism lies at the very roots of Marxism-Leninism was evidenced by the words of Lenin when he wrote:

> "We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of a violent revolution refers to the bourgeois state. It *cannot* be replaced by the proletarian state (the dictatorship of the proletariat) through 'withering away,' but, as a general rule, only through a violent revolution. The panegyric sung in its honour by Engels and fully corresponding to the repeated declarations of Marx (remember the concluding passages of the *Poverty of Philosophy* and the *Communist Manifesto*, with its proud and open declaration of the inevitability of a violent revolution; remember Marx's *Critique of the Gotha Programme* of 1875 in which, almost thirty years later, he mercilessly castigates the opportunist character of the programme)—this praise is by no means a mere 'impulse,' a mere declamation, or a polemical sally. *The necessity of systematically fostering among the masses this and just this point of view about violent revolution lies at the root of the WHOLE of Marx's and Engels' teaching.* The neglect of such propaganda and agitation by both the present predominant social-chauvinist and the Kautskyist currents brings their betrayal of Marx's and Engels' teachings into prominent relief" (Gov't. Ex. 6, pp. 19-20).[30] [Emphasis added.]

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[30] The same principle is stated in "History CPSU" (Gov't. Ex. 12, p. 9) as having been taught by Marx and Engels.

An attempt is made to justify this thesis for violent revolution through an assumption by the Marxist authorities that under no circumstances would the capitalist class surrender its power without a struggle (See Program of the Communist International, Gov't. Ex. 14, pp. 36-37). Co-conspirator Foster stated the proposition thusly:

> "The capitalists will never voluntarily give up control of society and abdicate their system of exploiting the masses. Regardless of the devastating effects of their decaying capitalism; let there be famine, war, pestilence, terrorism, they will hang on to their wealth and power until it is snatched from their hands by the revolutionary proletariat.
>
> The capitalists will not give up of their own accord; nor can they be talked, bought or voted out of power. To believe otherwise would be a deadly fatalism, disarming and paralyzing the workers in their struggle. No ruling class ever surrendered to a rising subject class without a last ditch open fight. To put an end to the capitalist system will require a consciously revolutionary act by the great toiling masses, led by the Communist Party; that is, the conquest of the State power, the destruction of the State machine created by the ruling class, and the organization of the proletarian dictatorship. The lessons of history allow of no other conclusion.
>
> It is the historical task of the proletariat to put a last end to war. Nevertheless, the working class cannot itself come into power without civil war. This is not due to the choice of the toilers: it is because the ruling class will never permit itself to be ousted without such a fight. 'Force,' says Marx, 'is the midwife of every old society when it is pregnant with the new one;

force is the instrument and means by which social movements hack their way through and break up the fossilized political forms.'" (*Toward Soviet America*, Gov't. Ex. 45, pp. 213-14).

The record discloses that these appellants in the Connecticut Communist Party were wholeheartedly in accord with the revolutionary policy of the National leaders. For example, the appellant Goldring during a conversation with the witness Gay stated that Communism in the United States could never be achieved through the use of the ballot; that the capitalistic system would never give up without a struggle and that he (Goldring) agreed with the Marxist-Leninist theory that communism would be achieved either through an internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. Goldring further stated that the Communist Party would be the leader in the proletariat revolution (Tr. 1783-85).[31]

The foregoing is but a brief analysis of the Marxist-Leninist doctrine of violent overthrow which was propounded within the Communist Party, both prior to the 1944 dissolution of the Party and after its reconstitution in 1945.[32] As the record readily indicates from the testimony of the witness Lautner (Tr. 2631) these "classics" were circulated and distributed among the Party members for study and guidance. The record also indicates that the "classics" distributed and circulated prior to 1944 were

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[31] This conversation took place in 1946 at the General Electric plant where both the witness and the appellant worked in the same section. They were also local officers of the Communist Party during this period (Tr. 1783).

[32] This court is not uninformed as to the violent revolutionary tenets of the Marxist-Leninist writings having reviewed them *in extenso* in *Dennis* and *Flynn*, *supra*.

the identical ones circulated and distributed within the Party after 1945 (Tr. 2622-2631). Indoctrination in the contents of these "classics" was an ever continuing process. The testimony of Lautner clearly discloses that these "classics" were circulated and distributed for self-study by Party members; that new Party members were required to attend new member classes; and that these very "classics" were used as textbooks in the various schools which he participated in, either as a student or a teacher (Tr. 2622-2631).

It is therefore clear that in July, 1945, when the Communist Party of the United States of America was reconstituted, basing itself on the principles of Marxism-Leninism; when it "suddenly reverted to its basic Communist principles" (Gov't. Ex. 21, p. 61), the Party was not charting a new course of action which suddenly had come upon an unsuspecting world. The Party including these appellants and their co-conspirators was simply reverting to the Marxist-Leninist doctrine of violent overthrow briefly outlined in the preceding pages.[33]

F. Appellants' Participation in the Conspiracy.

The activities of these appellants within the periphery of the conspiracy as well as within the framework of the Communist Party are summarized by appellants (App. Br. Appendix "B"). Additionally, however, there is substantial evidence, as to each of the appellants, which establishes their knowledge of the illicit objectives of the conspiracy and which is briefly summarized as follows:

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[33] Appellant Stone during a discussion of communism in 1946 was questioned as to how far the Communist Party in this country would go to gain their objectives. She replied, "Frankly, Annie, if necessary we'll have bloodshed" (Tr. 5072).

Sid Taylor

The appellant Taylor, the present chairman of the Communist Party of Connecticut, was an active Party member as early as 1939. He actively recruited members into the Party and its youth arm, the Young Communist League, in the late 1930's and early 1940's. As early as 1941 he organized Marxist-Leninist classes and directed students to attend. One school which was devoted to the Marxist-Leninist training of young Party members had as its chief instructor one Joseph Clark who had been sent to Connecticut by the National Office of the C. P., U. S. A. Taylor at the first session of the school distributed "Foundations of Leninism", "Problems of Leninism", "State and Revolution", and "The History of the Communist Party of the Soviet Union" to the students and urged them to read and study these books carefully. He stated that they contained the principles of Marx and Lenin which the students would have to follow if they were to become future Party leaders (Tr. 6356). During the first class at which Taylor was present the instructor Joe Clark explained the concept of the class struggle. He said that in the United States one class was pitted against another. The only way that socialism could be established was by getting rid of the fascist leaders who were the rulers in this country and through a dictatorship of the proletariat by conquest of power (Tr. 6360).

In 1946 Taylor attended classes held in New Haven, Connecticut. The instructor pointed out that the Soviet Union was a dictatorship of the proletariat. It was also pointed out that under capitalism war was inevitable and the only way to get rid of war was to destroy capitalism. The source material for this class was the "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12) (Tr. 4481-4482).

At a later class attended by the appellant Dimow as well as Taylor, the instructor stated that socialism is inevitable because we Communists will fight for it. He stated further that the United States sought war with Russia, but even though the United States was able to wipe out the Russians, the people would rise from the underground to carry on the fight for the Communist goal (Tr. 4519). Taylor himself spoke stating that "come the revolution, we'll allow the people to have the church for a little while" (Tr. 4520).[34]

In 1947, Taylor together with appellants Dimow and Goldring attended a closed Communist Party meeting in New Haven, Connecticut. At this meeting Jack Stachel, a member of the National Board of the C. P. U. S. A. and a co-conspirator, conducted a class on Marxist theory. He

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[34] Appellants attempt to pass over the evidence which clearly establishes their knowledge of, and adherence to, violent revolutionary tenets of the Communist Party (App. Br. 59-63). However, the record is clear that most of the statements concerning which they complain, that is statements by appellants themselves or by co-conspirators in their presence, were made at official Communist Party classes and meetings. Thus, these statements were admissible not only as bearing on the individual intent of the appellants but are binding on all as acts in furtherance of the conspiracy. *United States* v. *Gypsum Co.*, 333 U. S. 364, 393. The weight to be given such statements was a matter peculiarly within the province of the finders of fact. *United States* v. *Spagnuolo* (C. A. 2, 1948) 168 F. 2d 768, 770. However, considered in the light of the basic Marxist-Leninist doctrine which was being taught at the classes attended by Taylor and Dimow, the jury could not reach any other conclusion but that both these appellants understood and supported the Communist Party strategy of violent proletarian revolution. As Mr. Justice Harlan pointed out in *Flynn, supra*:

> "So here the relationships of the defendants and of others acting in concert with them; one with another, the defendants' positions of responsibility in the Communist Party, their activities in carrying forward the objectives of the Party, and the nature of those objectives were all matters properly to be considered upon the 'intent' of any particular defendant."

stated that the masses were not yet ready to move against capitalism so that the main strategy today was to attach themselves to many groups and organizations in order to curb capitalism wherever possible. However, he specifically pointed out that the strategic aim of the Communist Party was as it had always been, to destroy capitalism and establish the dictatorship of the proletariat (Tr. 4530-4533).

Later in 1947, Taylor organized, and assigned Communist Party members to attend, a nine-day Marxist training school. Both Taylor and the appellant Goldring attended the school at which the principal instructor was George Siskind[35], a representative of the National Office of the C. P. U. S. A. The Marxist-Leninist pamphlets, such as "Imperialism" (Gov't. Ex. 7); "History of the Communist Party of the Soviet Union" (Gov't. Ex. 12); "Foundations of Leninism" (Gov't. Ex. 4); "The Communist Manifesto" (Gov't. Ex. 11) and others were studied in connection with these classes. Among other things, Siskind taught the Communist Party members that Fascism could be prevented by the working class led by the Communist Party taking action at the proper time to overthrow the present system of government.

During this same period Taylor arranged Communist Party meetings which featured such prominent members of the National Office of the C. P. U. S. A., as John Pittman from the Daily Worker (Tr. 4568-4569), Henry Winston (Tr. 4566), and Betty Gannett (Tr. 4681-4693).

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[35] Another instructor, Joseph Roberts, at that time chairman of the Communist Party of Connecticut, stated that the readings in the Marxist-Leninist classics applied to present day conditions in this country (Tr. 5511-5549).

He actively participated in the state convention of the Communist Party of Connecticut in 1948 (Tr. 4594-4596). He participated in a three-day school during Memorial Day weekend 1949 at which one of the instructors predicted the destruction of capitalism in this country by the Communist Party. Another instructor, Mike Russo,[36] urged the Communist Party members present to study the Marxist-Leninist literature as well as the other material issued by the Communist Party (Tr. 6443-6446). Taylor also actively participated in a State Seminar at which Nat Ross from the National Office of the C. P. U. S. A. spoke in praise of the life work of Stalin (Tr. 4673-4680). In 1950 he participated in Communist Party meetings with Elizabeth Gurley Flynn, identified as a member of the National Committee of the C. P. U. S. A. (Tr. 2417). She spoke on the revolutionary activities of Lenin and predicted that in this country capitalism would crumble as the temple fell on Sampson.

During the fall of 1950 Taylor was establishing security measures in the Communist Party and instructed the witness Paumi that she was to be a courier (Tr. 6464). At his request she met him in New York. At the time he had taken measures to alter his appearance and was using the name Vito, the first of a number of fictitious names he was to use thereafter. He informed her that under instructions from the National Office of the Communist Party he and the other leaders of the Party in Connecticut were operating undercover in New York. Contact with the Communist Party in Connecticut was being maintained through a courier system (Tr. 6507-6509). Taylor's living expenses were being paid by the National Office of the C. P. U. S. A.

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[36] Co-conspirator Russo was State Chairman of the Communist Party of Connecticut from 1947 through 1949 (Tr. 1781, 4594). He later became an assistant to Betty Gannett who was assistant organizational secretary of the C. P. U. S. A. (Tr. 3395). He later became a Party leader in Massachusetts (Tr. 6517).

(Tr. 6512). In the course of subsequent meetings with Paumi, Taylor informed her that the Communist Party was the vanguard of the working class and that the Communists would take over the present form of government and establish socialism (Tr. 6515).

In late 1952 and during 1953 Taylor attended a series of secret meetings in Connecticut. Many of the meetings were held for the purpose of implementing the Industrial Concentration program in Connecticut, particularly at the General Electric Plant in Bridgeport. Appellant Stone, using the alias Comrade Ruth, was present at several of these meetings. (Tr. 6237-6241; 5159).

In 1954 a concealed five-man State board was organized to govern the Communist Party of Conecticut. Taylor under instructions from the National Office of the Communist Party became its chairman. Appellants Goldring and Ekins were also members. This board was responsible for the operations of the Communist Party of Connecticut and continued to function until Taylor and the other appellants were arrested. Its operations were characterized by the highest degree of secrecy. Despite the high degree of security concerning the activities of the top leadership of the Communist Party of Connecticut, the so-called open party members continued to carry out their activities in Connecticut, restricted, however, to the degree necessary to achieve security.

Joseph Dimow

Appellant Dimow, a member of the State Committee of the Communist Party of Connecticut, was active in the educational apparatus of the Party. In 1946 he was the principal instructor in a closed Party school in Connec-

tieut. During the course of his instruction he pointed out to the students that the United States was an imperialist nation and that the United States sought war with the Soviet Union. He continued by saying that if we do not have socialism in the United States within the next ten years, we face war. Inasmuch as the people do not want war, it leaves the possibility of revolution (Tr. 4479-4480). At a later class in this series Dimow and Taylor were present when a Party instructor taught the class that the destruction of capitalism in this country was inevitable. At the last class in this series, Dimow instructed the class on strategy and tactics using as his source material Chapter VII of "Foundations of Leninism" (Gov't. Ex. 4).[37] Dimow in interpretating strategy and tactics to the class pointed out that the capitalists sought war with the Soviet Union and that the Communist Party tactics were to stall them off with peace talk so the Communist movement would have time to develop China.

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[37] The clear, unequivocal call for the violent revolutionary overthrow of capitalism in all countries of the world, in this the era of imperialism, is a principal theme of Chapter VII of "Foundations of Leninism":

> "Strategy is the determination of the direction of the main blow of the proletariat at a given stage of the revolution, the elaboration of a corresponding plan for the disposition of the revolutionary forces (the main and secondary reserves), the fight to carry out this plan throughout the given stage of the revolution." (page 90)

> "Third stage commenced after the October Revolution. Objective: to consolidate the dictatorship of the proletariat in one country, using it as a base for the overthrow of capitalism in all countries. The revolution is spreading beyond the confines of one country; the period of world revolution has commenced." (page 91)

Stalin continues at page 95 and describes the revolution as an insurrection that must be carried out with the greatest "determination" and continues by stating that:

> "The defensive is the death of every armed uprising. You must take the enemy by surprise and seize the moment when his forces are scattered."

This, he pointed out, would put the Soviet Union in a position to take over the capitalist countries. He characterized the Communists in this country as an army. The Marxists were the Generals and the students studying Marxism were the officer corps (Tr. 4520-4521).

In 1947 appellant Dimow in his capacity as chairman of the Education Committee of the Communist Party of New Haven was responsible for the organization of a series of Marxist classes. A mimeographed outline (Gov't. Ex. 47) which was a condensed form of the "Outline on the Fundamentals of Marxism", issued by the National Education Committee of the C. P. U. S. A. (Gov't. Ex. 3) was the principal source material for these classes. Dimow himself was present at some of these classes. (Tr. 4705-4709).

There is additional evidence of appellant Dimow's educational activities. He, together with the appellants and their co-conspirators, urged the initiates to read and study the basic Marxist classics, as well as the "Daily Worker", "Political Affairs", "Study Course on the Communist Party, the Working Class and Industrial Concentration" (Gov't. Ex. 28), all of which were official publications of the C. P. U. S. A. (Tr. 4712-4730).

Dimow, as did appellant Taylor, engaged in the underground operations of the Party (Tr. 6519), attending secret functionary meetings held during the indictment period (Tr. 5057-5060; 6526-6528). He attended a meeting in 1953 in which the continued emphasis placed by the Party on the Marxist-Leninist indoctrination of Party members was pointed up. It was at this meeting that a member was awarded a set of the Little Lenin Library for his work in obtaining subscriptions to the Party press. (Tr. 6539).

Robert Ekins

The appellant Ekins, the only defendant who testified during the trial, joined the Communist Party in 1937 after a thorough study of the Party's program (Tr. 7103). In addition to those Party positions listed in Appendix "B" of Appellants' brief, Ekins admitted being an Educational Director and organizational secretary of a section in the New York State District of the C. P. U. S. A. as early as 1937 (Tr. 7132). In the early 1940's and again from 1945 until 1949 he was chairman of an upstate section of the Communist Party of New York (Tr. 7147-7148; 7188). He attended the National Convention in 1948 (Tr. 7433) and throughout his testimony freely admitted his familiarity with, and adherence to, the principles of the C. P. U. S. A. He admitted his participation in the underground apparatus of the Communist Party of Connecticut and was identified as a member of the concealed State Board of the Communist Party of Connecticut in 1954 (Tr. 5142; 5288).

In late 1952 Ekins, together with the appellants Taylor and Dimow, attended a meeting of the Communist Party of Connecticut at which Doxie Wilkerson, a Communist Party member from New York, led the discussion.[38] Wilkerson discussed the history of the Communist Party and pointed out that during the Browder period the C. P. U. S. A. had deviated from the principles of Marx and Lenin but that happily they had returned to these basic principles. In early 1953 he conducted a series of Marxist classes based on a pamphlet by J. Stalin entitled "Economic Problems of Socialism in the USSR". It was during this series of classes that Ekins explained that the

[38] Doxie Wilkerson, a former member of the National Committee of the C. P. U. S. A. and the "dean" of the Jefferson School of Social Science, was also a witness for the appellants.

Communists do not support imperialist wars but that they do support just wars. He pointed out that the Korean war was an unjust war because South Korea with the assistance of the United States had invaded North Korea. He then went on to say that the Communists would do all they could to support North Korea. In discussing just and unjust wars he pointed out by way of example that if the people of Puerto Rico were to revolt and throw off the yoke of the capitalists that would be a just war and the Communists would support the people of Puerto Rico.

Later in the same class, Ekins stated that war between socialism and capitalism is inevitable but that the Communists and Russia are not ready for war. He explained that when a just war breaks out, the Communists will know capitalism is on the way out. In the meantime the only way the Communists can fight against unjust wars is by passive means, such as the peace organizations. When asked by a student as to why the Communist Party bothers with peace organizations when they know that war between capitalism and socialism is inevitable, Ekins answered by saying that "we, (the Communists), are not ready yet."

In the last of this series of classes Ekins spoke in praise of the Soviet Union. He also informed the students that the Marxist classes had been a success and that they needed more Marxist classes but that a shortage of instructors made it impossible to indicate when another series of classes could be held (Tr. 5124-5137; 6532-6537).

Later, in 1953, Ekins attended a secret meeting of the State Negro Commission in West Haven, Connecticut. The principal speaker was "Comrade Frances" from the National Office of C. P. U. S. A. whose true name Ekins claimed was unknown to him. She advocated self-deter-

mination for the Negroes in the so-called black belt of the South so that they might have their own nation in that part of the United States. One of the members of the State Negro Commission stated that some people cannot learn by reading books and it is necessary to knock their heads together. He pointed out that "soon we're going to have a recession, then a depression, then we'll have the socialist revolution we've all been waiting for" (Tr. 5164-5184).

Throughout the indictment period Ekins was extremely active in support of the Party's program until he, together with appellants Taylor and Goldring, was arrested in May 1954 while attending a secret meeting of the concealed State Board in New York City.

Jake Goldring

Appellant Goldring, like the other appellants, was a long time member of the Party and fanatically dedicated to its revolutionary tenets. As early as 1941 he was busy recruiting members for the Communist Party. Several of the Marxist classes taught by George Siskind in 1941 were held at his home (Tr. 6367-6369). He took great pains to emphasize the importance of learning and understanding the principles of Marxism and personally recommended the use of the basic Marxist classics (Tr. 6387-6389).

In July 1945 Goldring attended the State Convention of the Communist Political Association which reconstituted the Communist Party of Connecticut.

As to Goldring's personal intent there can be no question. In 1946, while discussing the doctrines of the C. P. U. S. A., he stated that "Communism in the United States

could never be achieved through the use of the ballot, that the capitalistic system would never give up without a struggle, and that he (Goldring) agreed with the Marxist-Leninist theory that Communism would be achieved either through internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. The Communist Party would be the leader, in the leadership in the changing of the character of an imperialist war" (Tr. 1783-1785). According to the witness Gay, Goldring made similar statements on other occasions as well (Tr. 1842-1843).

As did the appellants Taylor and Dimow, Goldring attended other Communist Party meetings in the late 1940's at which the necessity for the revolutionary overthrow of the United States was discussed and advocated (Tr. 4530-4534; 5513-5514; 5540-5543; 5546-5549; 4677-4680).

In 1950 Goldring attended a Communist Party meeting at which the Korean War was discussed. He informed the Party members that he had received a telegram from the National Office of the C. P. U. S. A. concerning the Party position on the Korean War. He informed the meeting that it was the position of the C. P. U. S. A. that the South Koreans had invaded North Korea and that the Communist Party should help the North Koreans. He stated further that the National Office of the C. P. U. S. A. had instructed the members to pass out petitions and to discourage persons from joining the military service (Tr. 6462).

From 1950 until 1954, as pointed out heretofore, Goldring together with the other appellants was an active participant in the underground apparatus of the Communist Party of Connecticut. He attended numerous secret meetings until his arrest at a secret meeting of the con-

cealed State Board of the Communist Party of Conneticut in New York City in May 1954.

In 1953 he participated in the planning of secret Marxist classes which were held in Connecticut and directed several Party members to attend the classes (Tr. 5189). At a secret meeting of the City Committee of Bridgeport in the same year, he discussed the importance of Marxist classes, in conjunction with the regular Party meetings, as well as at more formalized schools (Tr. 5193-5194; 5197).

Again in 1953, at an important Communist Party meeting, he emphasized the importance of concentrating Party members in the key basic industries. He urged the women in the Communist Party to make every sacrifice to help implement this program, even to the extent of hiring baby sitters to mind their children while they went into industry (Tr. 5205).

From the totality of the evidence presented of which this is but a brief summary, it is impossible to reach any other conclusion but that Goldring was a fanatical member of the Party, fiercely dedicated to the task of carrying out the illicit objective of violent overthrow of the present Government of the United Sates.

Martha Stone

Appellant Stone, who was introduced to certain members of the Communist Party of Connecticut as Comrade Ruth, has held important Party positions since 1933. Since 1950 she has shared with the *Dennis* defendants and Elizabeth Gurley Flynn (*Flynn* case, *supra*) the responsibility for carrying out the national policy of the C. P. U. S. A. Among her specific duties has been that of coordinating

the activities of the underground apparatus of the Communist Party of Connecticut (Tr. 5266-5267).

The evidence as to Stone's indoctrination in the revolutionary tenets of Marxism-Leninism dates back to the 1930's when she attended organizational meetings of the Communist Party of New York State at which the policies of the C. P. U. S. A. were discussed (Tr. 2394-2395). She attended the Seventh World Congress of the Communist International held at Moscow, U. S. S. R. in 1935 and the National Convention of the C. P. U. S. A. held at New York City in 1936. In 1938-1939 she attended the National Training School of the Communist Party. At this school she was a group leader (Tr. 2075; 2132). The instructors at this school were such now familiar names as William Z. Foster, Earl Browder, George Siskind, Elizabeth Gurley Flynn, Jack Stachel, Alexander Bittelmann, Gil Green, Alexander Trachtenberg, James W. Ford, and others.

A detailed discussion of the instruction received by Stone at the school, while it would be very illuminating as to the knowledge and intent of the appellant, is not practical within the confines of this brief. However, it will suffice to point out that the instruction covered a period of approximately nine months and was based on such Marxist-Leninist documents as "Foundations of Leninism", "Imperialism", "State and Revolution", "The Communist Manifesto", and others (Tr. 2166). The instructors emphasized the importance of a well organized and well disciplined Communist Party that would be able to organize and mobilize the people to overthrow their own government, smash the rule of the capitalists and institute the dictatorship of the proletariat. In this connection the students studied and discussed the lessons of the Russian revolution as a guide for the forthcoming proletarian

revolution in this country (Tr. 2171-2173). They also were instructed concerning the form of Soviet Government which would rule this country after the successful proletarian revolution (Tr. 2175-2176). The Communist concept of just and unjust wars was studied and plans for turning the so-called imperialist war into a civil war were discussed. As in so many of the later classes, the importance of defending the aims of the Soviet Union was also discussed (Tr. 2177-2178).

That appellant Stone was fully conversant with the violent revolutionary objectives of the C. P. U. S. A. is not only evident from her participation at the National Training School. In 1946 at a meeting in which the objectives of the C. P. U. S. A. were being discussed she frankly stated that "if necessary we'll have bloodshed" (Tr. 5071).

Appellant Stone's loyalty to the Party's program is amply reflected in her untiring efforts in its behalf. Her efforts to recruit members from among the leadership of the unions (Tr. 5075-5078), as well as her efforts to intensify the industrial concentration program in Connecticut mark her as a dedicated Party leader (Tr. 5291-5293). Her selection as an alternate member of the National Committee of the C. P. U. S. A. clearly reflects her dedication to the violent revolutionary overthrow of the Government of the United States.

The evidence concerning the existence of the conspiracy, its aims and objectives, the participation of each of these appellants in its illicit program, their knowledge and intent, is such that the jury verdict is fully supported by the record.

Argument

Preliminary Statement

The case under consideration in this appeal is one of a series of cases in which judgments of conviction have been entered against defendants charged with conspiracy to violate the Smith Act. This court has reviewed and affirmed two prior cases, *Dennis* and *Flynn, supra,* in which the issues of fact and law were substantially the same as those in the present appeal. The issues raised by the present appellants which pertain to prosecution under the Smith Act are neither novel nor persuasive, but for the most part constitute an extensive restatement of questions hitherto ruled upon by this court, the Supreme Court and other appellate courts.

The appellants have argued their basic contentions under four separate headings. However, under each heading there are numerous sub-headings containing subsidiary specifications of error in support of the contention of error set forth in each principal heading. Many of the arguments are interrelated and are urged in support of several contentions. Therefore, no attempt is being made to answer each argument in the order and under the heading used by appellants.

I

The Smith Act as applied in this case does not violate the Constitutionally protected rights of the appellants.

a. Scope of Appellate Review

The scope of appellate review of evidence presented to a jury is so well settled that it would not be necessary to mention it in the usual case. However, appellants have devoted so much space to minimizing the evidence, to drawing every conceivable unfavorable inference from the evidence and to a broadside attack upon the credibility of the Government's witnesses that a brief recapitulation of the basic principle underlying appellate review of a criminal case is in order.

As this case comes before this court, the sole issue relating to the sufficiency of the proof is whether "there was some competent and substantial evidence before the jury fairly tending to sustain the verdict". A verdict supported by sufficient evidence is binding on a reviewing court. *United States* v. *Socony-Vacuum Oil Co., Inc.*, 310 U. S. 150, 154, *Glasser* v. *United States*, 315 U. S. 60, 80:

> "It is not for us to weigh the evidence or to determine the credibility of witnesses. The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it. *United States* v. *Manton*, 167 F. 2d 834, 839, and cases cited. Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a

'development and collocation of circumstances'. *United States* v. *Manton, supra.*"

See also *Abrams* v. *United States,* 250 U. S. 616, 619; *Carlson* v. *United States,* 187 F. 2d 366, (C. A. 10) cert. denied 341 U. S. 940; *Hulahan* v. *United States,* 214 F. 2d 441 (C. A. 8) certiorari denied 348 U. S. 856; *Jensen* v. *United States,* 213 F. 2d 781 (C. A. 8) certiorari denied 348 U. S. 835; *McGuinn* v. *United States,* 191 F. 2d 477 (C. A. D. C.); *Orvis* v. *Higgins,* 180 F. 2d 537, 539 (C. A. 2), certiorari denied 340 U. S. 810.

b. Sufficiency of the Evidence

As pointed out heretofore, this case is one of a series of prosecutions for conspiracy to violate the Smith Act. In each of the cases reviewed by appellate courts the evidence was found to be sufficient. *Dunne* v. *United States,* 138 F. 2d 137, 147-152 (C. A. 8) certiorari denied 320 U. S. 790; *United States* v. *Dennis, supra; Frankfeld* v. *United States,* 198 F. 2d 679, 684-687 (C. A. 4) certiorari denied 344 U. S. 922; *Yates* v. *United States,* 225 F. 2d 146, 163-164 (C. A. 9) cert. granted 350 U. S. 860; *Wellman* v. *United States,* 227 F. 2d 757, 771-773 (C. A. 6). Although the Supreme Court affirmed the decision of this court in *Dennis* without passing directly on the sufficiency of the evidence, the evidence was accorded considerable approval in the various opinions handed down by the Court. In the *Flynn* case the appellants did not raise the question of the sufficiency of the evidence, but this court pointed out at page 358 "[w]e are satisfied that it was ample both to require the submission of the case to the jury and to sustain the verdict". This, of course, also answers appellants' contention that the striking of the organizing branch of the indictment by the trial court breaks the thread of evidence which ties the appellants to their co-conspirators, particularly those co-conspirators who were convicted

in *Dennis* (App. Br. page 28). This court in *Flynn* was confronted with an identical situation when it affirmed the conviction in that case. In *Flynn* the trial court, as in the instant case, held that the organizing part of the indictment was barred by the statute of limitations but *Flynn* was affirmed nonetheless.

In *Dennis* this court reviewed and discussed the sufficiency of the evidence pointing to the teaching and advocacy of the necessity for the violent overthrow of the present Government of the United States. At pages 206-207 of the *Dennis* opinion Judge Hand pointed out:

> "The defendants protest against this interpretation of their teaching and advocacy. They say that the use of 'force and violence' is not part of their program, except as it may become necessary after the proletariat has succeeded in securing power by constitutional means * * *. It is unnecessary to quote in detail the many passages in the pamphlets and books, published and disseminated by the defendants, which flatly contradict their declarations that they mean to confine the use of 'force and violence' to the protection of political power, once lawfully obtained. The prosecution proved this part of its case quite independently of the testimony of its witnesses, though the jury might have relied upon that had it stood alone. The sufficiency of the evidence therefore comes down to whether it is a crime to form a conspiracy to advocate or teach the duty and necessity of overthrowing the government by violence, and to organize the Communist Party as a group so to teach and to advocate."

The conclusion reached by this court in *Dennis* is equally applicable here inasmuch as these appellants were actively engaged in implementing the conspiracy initiated by the *Dennis* defendants. The interrelation between these appel-

lants and their co-conspirators is apparent from the evidence and indeed appellants concede "that the conspiracy which is the subject of this indictment is continuing in nature" (App. Br. page 46). The conspiracy being the same in both cases, the differing stations occupied by the conspirators within the framework of the conspiracy are not a controlling or distinguishing factor. Compare *Hyde* v. *United States*, 225 U. S. 347, 379-380; *Lew Moy* v. *United States*, 237 Fed. 50, 52 (C. A. 8).

The defendants in the *Frankfeld* case, *supra*, who were leaders of the Communist Party at the District level as are these appellants (with the exception of appellant Stone who is on the national level with the *Dennis* defendants), were convicted under an indictment substantially identical with the instant indictment. The appellate court in *Frankfeld* reviewed the evidence in detail and found it amply sufficient:

> "By reason of the positions held by these persons in the party and the active part taken by them in its work, the jury were amply justified in concluding that they had knowledge of its purposes. It is well settled that persons who join a conspiracy with knowledge of its unlawful purposes make themselves parties thereto and are equally guilty with those who originated it [citing cases]. As said by Mr. Justice Jackson in *American Communications Association* v. *Douds*, 339 U. S. 382, 433, 70 S. Ct. 674, 701, 94 L. Ed. 925, * * * personal guilt may be incurred by joining a conspiracy. That act of association makes one responsible for the acts of others committed in pursuance of the association." (686-687)

The appellate courts in other Smith Act conspiracy cases involving District and State leaders of the Com-

munist Party have reached similar conclusions. See the *Yates* and *Wellman* cases, *supra*.

The indictment in the instant case closely parallels the *Dennis* indictment. Its validity was specifically upheld by the Supreme Court in *Dennis* at page 516

> "We hold that §§2(a)(1), 2(a)(3) and 3 of the Smith Act, do not inherently, or as construed or applied in the instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendment because of indefiniteness."

The evidence in support of the conviction of these appellants amply supports the verdict returned by the jury. As set forth in the Statement of Facts, *supra*, the evidence offered in the instant case substantially parallels the evidence of the conspiracy in *Dennis*. Indeed these appellants were found to have conspired with the *Dennis* defendants. In both cases, the Government presented the testimony of former high ranking Communists, supported by the writings of the conspirators, to prove the violent revolutionary principles of Marxism-Leninism on which the Party based itself.

We are not dealing with persons who are strangers to each other or mere casual acquaintances who happen to come together for an isolated venture. These appellants, as shown by the evidence, are dedicated Communists in the true Leninist sense, who live by and for the Party. They were the top functionaries of the Communist Party within the State of Connecticut. All actively engaged in Communist Party activities during their adult years. All, together with the other co-conspirators, have dedicated themselves to the establishment of the dictatorship of the proletariat in the United States.[39]

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[39] It is painfully clear from the record that the so-called "political" nature of the Communist Party is a mere sham.

Appellants were the central figures who controlled the Communist Party in Connecticut. Indisputably they were the top policy making and administrative officials of the Communist Party in Connecticut, working in close conjunction with their co-conspirators, the National Party leaders who in turn exercised control on a national level. By virtue of the Marxist-Leninist doctrine of democratic centralism, appellants maintained a tight discipline over all members and lower officials of the Party which insured the execution of Party instructions from above and foreclosed Party activities inconsistent with the established Party line.

Without restating again the evidence set forth in the Statement of Facts, *supra*, it is clear that the jury had before it for its consideration evidence which established the following:

The Communist Party was organized on Marxist-Leninist principles of organization, (Gov't. Exs. 3, 17, 28, 34, 53) which had stood the test of the violent Bolshevik revolution of 1917. Appellants and the Party have followed the practice of using devious devices for concealing their activities and true aims and objectives.[40] The uncontradicted evidence shows the existence of an organized underground apparatus, the existence of secret schools and

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Appellants themselves cite figures to prove that at no time in its history has the Communist Party secured even a semblance of legitimate political recognition by the electorate in this country (App. Br. p. 108). This combined with the ludicrous testimony of the appellant Elkins concerning his "nomination" on the Communist Party ticket for Attorney General of Connecticut in 1954 establishes that the Communist Party in no way conforms to the criteria that identify the legitimate political parties in this country.

[40] See *Blumenthal* v. *United States*, 332 U. S. 539, 577. "Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved the more successful the crime."

classes, the use of protective language in Party documents, precautions taken with regard to the use of the normal means of communications and other measures taken to preserve the secrecy of the Party's activities.[41] Every Party member from appellants to the newest recruits was subject to the principle of democratic centralism which the Communist Party of the Soviet Union found, from experience, insures the strictest and truly iron discipline (Gov't. Ex. 12, see Statement of Facts, *supra*, page 23). Extreme efforts were exerted to establish Party members in the basic industrial plants in the United States. Party members were subjected to a process of indoctrination and education in the fundamentals of Marxism-Leninism in order to train them for their roles as leaders of the working class in the proletarian revolution (Gov't. Exs. 3 and 17).[42]

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[41] Appellants describe their conceded use of these techniques as "purely defensive" (App. Br. p. 66) against what is referred to as the atmosphere of McCarthyism (Tr. 7283) and so-called "harassment" by the F. B. I. (Tr. 7278). The record, however, contains no evidence that the appellants were in any way prevented from engaging in legitimate activity prior to their arrest in this case. The evidence establishes that on a few occasions during a period when six high ranking leaders of the Party were fugitives from justice (Henry Winston and Gil Green convicted in *Dennis, supra;* James Jackson, Fred Fine, William Norman and Sid Stein indicted in *Flynn, supra*) the F. B. I. for short periods of time closely observed the activities of the appellants (Court Ex. #C5). At no time was any effort made to physically restrain or interfere with any of the activities of the appellants. The methods used to observe the clandestine activities of the appellants and the Party were proper and necessary for the protection of the country from subversive organizations. The F. B. I. would have been remiss in its duty to have ignored the activities of the Communist Party and these appellants.

[42] Appellants' contention that the evidence does not establish the Party's continued adherence to and advocacy of the basic tenets of Marxism-Leninism during the period March 4, 1952 to March 5, 1955, is categorically refuted by their own evidence (App. Br. pp. 39 et seq.). In "History of the Communist Party

Briefly stated, the Party classes and schools persistently made plain to the Party members the program of Marxism-Leninism. To this end they were taught from the Marxist-Leninist classics and to a substantial degree from the other writings emanating from the leaders of the C. P. U. S. A. This teaching demonstrated to the initiates tha (1) their employers are their enemies in a class war which persists in our capitalist society, and that they control the Government of the United States and use it as a repressive force against the workers; (2) that the United States is an imperialist Government which threatens the aspirations of the peoples of the world for peace, democracy and progress; (3) the present Government is presently decaying and is in its last stage of existence and this is the threshold of the violent proletarian revolution; (4) the Government will not collapse by itself but must be seized by the proletariat and replaced by the dictatorship of the proletariat; (5) the proletariat must resort to force and violence in their quest for power and must completely smash and destroy the existing state machine; (6) the dictatorship of the proletariat which arises from the

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of the United States" (Def. Ex. V) William Z. Foster, the Chairman of the CPUSA, states at page 1:

> The life history of the Communist Party is also the history of Marxism for a century in the United States. The C. P. U. S. A. is the inheritor and continuor of the many American Marxist parties and organizations which preceded it during this long period. It incorporates in itself the lessons of generations of the political struggle by the working class; of the world existence of the first, second, and third internationals; of the writings of the great socialist theoreticians, Marx, Engels, Lenin, Stalin; and of the great revolutions in Russia, China, and Central and Eastern Europe.

Foster's principal source materials as indicated by the footnotes throughout the "History" published in 1952 are the basic Marxist-Leninist documents, such as "Problems of Leninism", "State and Revolution", "Foundations of Leninism", "Left Wing Communism", "An Infantile Disorder", "The Communist Manifesto", all familiar as exhibits in the case.

successful proletarian revolution must be a government which favors the worker and forcibly suppresses the vanquished bourgeoise; (7) the workers will not rise up spontaneously but must be led and directed by the Party, whose historic mission is to execute a successful violent revolution and establish the dictatorship of the proletariat; (8) the workers in the United States are bound together with the workers of the Soviet Union as the Soviet Union is the fatherland of the proletarian revolution; and (9) in all their endeavors directed at fulfilling the historic mission of the C. P. U. S. A., its members must understand and be guided by the experiences of the Communist Party of the Soviet Union.

c. Credibility of the Witnesses

Although it is a basic principle of criminal procedure that the credibility of witnesses is a matter to be resolved by the triers of fact, that is the jury in the instant case, appellants have devoted a not inconsiderable portion of their brief to a discussion of the Government witnesses (App. Br. 67-80). They do not allege prejudice by reason of any limitation as to their right of cross-examination, for, indeed, they cannot. The plain purport of their argument is to malign the character and credibility of practically all of the Government witnesses.

Appellants' argument is readily answered in the light of the record. The trial judge, in the exercise of his discretion, permitted unrestricted cross-examination of each Government witness. With one or two exceptions each witness was cross-examined by four defense attorneys which in many instances resulted in the repetition of questions as many as three or four times by different counsel. During the defense summations to the jury the

witnesses were treated with every form of vituperation that defense counsel could call upon. Appellants' brief contains but a mild summary of the arguments which the jury heard before passing on the credibility of the witnesses.

Despite the reckless allegations directed at the credibility of the witnesses, the record demonstrates that their testimony is, for the most part, uncontradicted and unchallenged. The charges against the witness Lautner are typical of those directed at all the Government witnesses. He is charged with working for a living (App. Br. 69-70); with being a "prolific testifier" (that is with having testified on occasions when called upon to do so) (App. Br. 70-71); and with discussing his testimony with Government attorneys prior to taking the witness stand (App. Br. 71). It is hardly necessary to comment on the fact that these activities were neither improper or illegal.

Peculiarly enough appellants offered no evidence challenging the factual testimony given by Lautner. Despite the fact they had available the transcripts of a number of prior proceedings in which he had testified they were unable to point out a single contradiction. Nor was defense witness Wilkerson, who was present at the 1945 National Convention concerning which Lautner testified at length, able to contradict any of his testimony concerning the proceedings at that Convention.

Finally, appellants challenge Lautner's "expertness" to testify on the subject matter of Marxism-Leninism (App. Br. 71). As in the *Flynn* case, *supra*, Lautner's expert or opinion testimony was limited to his understanding, in connection with the other leaders of the Communist Party with whom he was working, as to the ultimate aim and objective of the C. P. U. S. A. His right to give this

opinion testimony was predicated on his long-time membership in the Party, the positions he held, the schools he attended and in which he taught, as well as on his discussions with the leaders and other members of the C. P. U. S. A. (Tr. 3415-3416; 3434-3446; 3463-3468).[43] However, if there was a question as to his "expertness" on the subject matter of Marxism-Leninism, this was dissipated by his intensive voir dire examination by appellants' counsel (Tr. 2951-3016) which clearly demonstrated his complete mastery of the basic Marxist-Leninist writings.

d. Incitement to Action

Appellants argue that the Government has not proved a conspiracy to teach the proscribed doctrine in the language of incitement (App. Br. pp. 50-57). However the jury was charged on this issue, in substance, as in *Dennis* and *Flynn* and as in those cases, found that the evidence met the test.

Under the law governing the case it is not necessary to prove the appellants conspired to teach and advocate an immediate forcible attempt at overthrowing or destroying the Government. As Chief Justice Vinson pointed out in *Dennis, supra* at pages 509-510

> "In the instant case the trial judge charged the jury that they could not convict unless they found that petitioners intended to overthrow the Government 'as speedily as circumstances would permit'. This does not, and could not properly mean, that they would not strike until there was a certainty of success. What was meant was that the revolutionists would strike when the time was ripe."

[43] See also *Frankfeld* v. *United States*, 198 F. 2d 679, 698 (C. A. 4), certiorari denied 344 U. S. 922 and *Wellman* v. *United States*, 227 F. 2d 757, 769 (C. A. 6).

The burden of Judge Hand's analysis of prior cases in this general field (*Dennis* case *supra* pp. 207-212) was to show that the advocacy of forcible overthrow need not constitute a call for immediate action in order for it to be punishable. Indeed, in formulating his statement of the "clear and present danger" test which was later adopted by the Supreme Court, Judge Hand said at page 212

> "We have purposely substituted 'improbability' for 'remoteness', because that must be the right interpretation. Given the same probability, it would be wholly irrational to condone future evils which we should prevent if they were immediate; that could be reconciled only by an indifference to those who come after us".

Clearly, it is the teaching and advocacy that the Government must be overthrown and destroyed by force and violence when conditions are ripe, in language reasonably calculated to move the Party members to such action, that is sufficient here. This, the evidence proved, and the jury found. The Party members learn immediately that Marxism-Leninism is a science and a guide to action. No Party member could fail to comprehend that he was studying Marxism-Leninism, as enunciated in the "classics" and in the study outlines, as a guide to action which he was expected to take at the propitious moment. When we consider that the Party member is part of a far flung, disciplined organization which concentrates on recruiting members in key basic industries, who can doubt that the member understands that his Marxist-Leninist training has been received in anticipation of the proletarian revolution and not as "a seminar in political theory"?

Contrary to appellants' contentions, the language of the Marxist-Leninist classics is not the sum total of the evi-

dence of incitement in the Government's case. The language contained in the books is meaningless until it is activated as a guide to action. It is not the books that are proscribed but the application of the violent revolutionary tenets that they contain, by these appellants and their co-conspirators. Appellants implied analogy of their teaching and advocacy, to the use of the same books as a source of general literary study in colleges and universities is entirely misplaced. They do not, nor could not point out, by way of example, any college or university that unqualifiedly bases itself upon the principles of Marxism-Leninism as a guide to action as does the C. P. U. S. A.

It is not necessary at this time to restate the evidence which constitutes the requisite incitement to action inasmuch as it has been pointed out in detail heretofore.[44] It is sufficient to point out that the evidence, taken in its entirety, warranted the trial judge in submitting the case to jury who in turn found that there was proof beyond a reasonable doubt of the guilt of the appellants. As the opinion of the Court points out in the *Wellman* case, *supra,* at page 773:

> "Appellants contend that there was no evidence showing that their advocacy partook of the character of incitement. We do not agree. An overall consideration of the activities of the Communist Party and its teachings to its members in secret Party schools strongly supports the reasonable conclusion that the Party was not conducting 'a seminar in political theory' but that the principles of Marxism-Leninism were being taught as a guide to action which was expected to follow at a later propitious time."

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[44] See statement of the case, *supra*, p. 8 et seq. and the summary of evidence as to the intent of the individual appellants, *supra*, pp. 52-65.

It is submitted, therefore, that the trial court had ample evidence before it to submit the case to the jury on this issue, and that the jury had sufficient evidence before it to determine, as they did, that these appellants were engaged in a conspiracy to teach and advocate the forcible overthrow of the Government of the United States through the vehicle of the Communist Party as speedily as circumstances would permit by words reasonably and ordinarily calculated to incite to action.

e. Overt Acts

Appellants while conceding that at least some of the overt acts were proved[45] and that under 18 U. S. C. 371, it is not necessary that an overt act in and of itself be an unlawful or criminal one, nonetheless argue that the overt acts proved by the Government could not be deemed in furtherance of the conspiracy charged in the indictment (App. Br. pp. 47-50). The rationale of appellants' argument is indeed paradoxical. It contains a contradiction in terms when considered in the light of principles applicable

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[45] It is the Government's position that overt acts numbers 1 through 15, as alleged in the indictment, were proved. See *Flynn* at pages 359-360.

> "But even were we to accept the appellants' premise, we think untenable the idea that the usual conspiracy rule applicable to 'a run-of-the-mine conspiracy case'—to use a phrase of the appellants—should not be applied to a conspiracy to teach and advocate the necessity of the violent overthrow of our Government. In the case of so serious a crime as treason. Justice Jackson in *Cramer* v. *United States*, 325 U. S. 1 (1945), took occasion to repudiate the notion that ordinary rules can be made to vary dependent on the gravity of the offense.[3] In the same type of case our concepts do not recognize one kind of law for one case and another kind for another. Indeed, in *Dennis* we applied ordinary conspiracy rules to a Smith Act conspiracy, 183 F. 2d at page 230."

to overt acts. The main thrust of their argument appears to imply that this case is what they refer to as a "First Amendment case" and for that reason the overt acts must be an act which in and of itself contains advocacy of the forceful overthrow of the Government of the United States in words of incitement, that is, a different standard is to be applied to the proof of overt acts in the instant case than in ordinary conspiracy cases.

Without discussing the evidence offered to prove the individual overt acts let it suffice to point out that such a proposition is not a correct statement of the rules of conspiracy law. As pointed out by the Supreme Court in *Braverman* v. *United States*, 317 U. S. 49 at page 53, the overt act, without proof of which a charge of conspiracy cannot be submitted to the jury, may be that of only a single one of the conspirators and need not be itself a crime.

Overt acts must accompany or follow the agreement and must be done in furtherance of the objects of the conspiracy. In *Marino* v. *United States*, 91 F. 2d. 691, 694-695 certiorari denied, 302 U. S. 764, the Court described the legal requirements as follows—

> "The crime is completed when an overt act [to] effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy, and is 'an act to effect the object of the conspiracy' *Joplin Mercantile Co.* v. *United States*, 236 U. S. 531, 535, 35 S. Ct. 291, 293, 59 L.Ed. 705. It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must however accompany or follow the agreement, and must be done in furtherance of the object of it." (Numerous authorities cited in footnote.)

The object of the present conspiracy is the teaching and advocacy of the duty and necessity of overthrowing the Government of the United States by force and violence. In order to implement this illicit teaching and advocacy, the Communist Party U. S. A. was reconstituted in 1945 as the vehicle of the conspiracy. This was the agreement to which each of these appellants and their co-conspirators became a party during and subsequent to 1945. Everything done thereafter to implement or bring into effectuation the teaching and advocacy of the proscribed doctrine was not only evidence of the unlawful agreement, but constituted acts in its furtherance. In other words, these activities were overt acts directed toward the completion of the crime of conspiracy. The overt acts alleged and proved within the statute of limitations[46] were overt acts which manifested that the conspiracy had not terminated, but was still at work within the statutory period.

The participation of the appellants in the activities alleged and proved as to each overt act are so obviously acts in furtherance of the conspiracy, that they admit of no argument. It is submitted, therefore, that the overt acts were sufficient as being in furtherance of the conspiracy.

f. Clear and Present Danger

In the face of the clear cut findings with regard to the existence of a "clear and present danger" announced by this court as having existed at the time of the *Dennis* indictments; and of its continuation through *Flynn*, appel-

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[46] As appellants concede, many of the overt acts concerned measures taken to conceal their activities, (App. Br. p. 48) the recognized weapon of criminal conspirators. Additionally, as in the case of Overt Act 3 (Tr. 5057), there was evidence of recruitment, an act by its very nature essential to the continuation of the conspiratorial activities.

lants argue, in effect, that the prerequisite conditions for a finding of clear and present danger no longer exist. This, they contend, in the light of the evidence in the instant case which clearly establishes that the conspiracy charged in the present indictment is an uninterrupted continuation of the same conspiracy found to have existed at the time of both *Dennis* and *Flynn*.

Appellants' argument with regard to the existence of a "clear and present danger" can be divided into two general headings. First, whether the teaching and advocacy of appellants and their co-conspirators contemplates or teaches the circumstances in which an attempt at the violent overthrow of the Government of the United States will occur, and (2) was there a probability at the time of the indictment that such circumstances would occur. Mr. Justice Harlan in *Flynn* at page 366, pointed out—

> "The branch of the argument based upon the contentions that Communist doctrine, at least in its more modern manifestations, is non-revolutionary is clearly foreclosed by the jury's verdict. The Court instructed the jury that in order to find a defendant guilty '* * * you must further find that it was the intent of the defendant to achieve this goal of the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit it to be achieved.' Thus we must take it that the jury found, on adequate evidence, that each convicted defendant intended to attempt the violent overthrow of the Government at the first propitious moment."[47]

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[47] The trial judge in the instant case charged "This third element is the specific intent which the government to convict a defendant must prove that a defendant had while a member of the conspiracy to cause or bring about the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit" (Tr. 8953).

It is submitted, therefore, that the jury verdict in the instant case is dispositive of that part of appellants' argument which concerns itself with the teaching and advocacy of the C. P. U. S. A.

We turn now to the second part of appellants' argument which concerns itself with whether there was a probability at the time of the indictment that circumstances pre-requisite for the forcible overthrow would occur. An analysis of this point must be considered in the light of this court's opinion in *Flynn*. As Judge Harlan pointed out at page 366—

> "The second branch of the argument rests upon a misconception of what this Court and the Supreme Court have held as the meaning of 'clear and present danger' and as to what the lower Court found in that respect. 'Clear and present danger' does not mean, as appellants' argument seems to suggest, that the trial Court must find that the alleged conspirators have agreed upon a precise set of circumstances under which they will attempt to strike down the Government, and, further, the existence of those particular circumstances. In the very nature of things those who advocate the violent overthrow of the Government cannot themselves foresee the future so clearly as to forecast the particular conditions under which it may seem to them propitious to strike at the established authority. Indeed, the appellants themselves argue in connection with their assertion that Communism has cast aside its revolutionary doctrines that the Marxist-Leninist teachings are flexible enough so as to be adaptable to changing sets of circumstances Where a conspiracy to destroy the Government by force or violence is involved, we

> think that the 'clear and present danger' concept, as defined in *Dennis* (183 F. 2d at page 212, 341 U. S. at page 510), connotes no more than that the setting in which the defendants have conspired is such as to lead reasonably to the conclusion that their teachings may result in an attempt at overthrow.
>
> This is the basis on which the trial Judge proceeded, and we think rightly. His finding of a 'clear and present danger' was based not on a determination that Communist doctrine envisaged a particular situation as propitious for an attempt at forceful overthrow of the Government and that such a situation was upon us, but rested rather on the premise, confirmed by the jury's verdict, that the defendant's sought to bring about such overthrow of the Government "as speedily as circumstances will permit", and on a combination of factors from which he estimated the probability of some crisis or extreme tension which might present the awaited opportunity. * * *."

Appellants take the position that the trial judge in the instant case had before him evidence which demonstrates that the utterances[48] of these appellants could not, under existing and foreseeable circumstances, have created the danger of an attempt to overthrow the Government by violence (App. Br. page 100). While we do not concede

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[48] Of course it is not the utterances of the appellants in and of themselves that constitute the "clear and present danger" but, as Chief Justice Vinson pointed out in *Dennis* at pp. 510-511, "The formation by petitioners of such a highly organized conspiracy, with the rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch and go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score."

that the affidavits filed by the appellants, were competent evidence, the fact remains that their contents were available to the trial judge for his consideration in connection with his judicial findings on the question of "clear and present danger". Thus the appellants cannot complain that they did not have a full and complete opportunity to be heard on the question of "clear and present danger".

The trial judge filed a memorandum containing his finding that the "clear and present danger" found to have existed at the time of *Dennis* and *Flynn* continued in existence as of March 4, 1955, the date of the filing of the indictment in the instant case.[49] In the memorandum he incorporated the reasoning on which he based this finding. It is therefore, unnecessary to discuss the factors that support the correctness of this finding. This court, as was the trial judge, is familiar with the precarious state of world conditions which continues to threaten the peace and security of the United States.[50] That this court, as did the trial court, can and should take judicial notice of these conditions is so well settled as to require no further comment.

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[49] See Appendix 2 Trial Court's "Finding on Issue of Clear and Present Danger" filed March 24, 1956.

[50] In contrast to the naive statements contained in appellants' brief that the relations between the United States and Communist countries in 1955 could no longer be properly described as "touch and go" and "inflammable" (App. Br. pp. 117-119), the sad and critical events of recent weeks only serve to illustrate the correctness of the trial judge's finding. The weeks of horror inflicted on the people of Hungary by the Soviet Armies, as well as the threat of armed intervention by the Soviet Union in Syria and the Suez Canal crisis, are but further manifestations of the fact "that there has been no substantial change in the basic positions of the Free and Communist worlds".

II

The Trial Court did not err in the admission of evidence.

A. Testimony of the Witness John Lautner.

Appellants contend that the trial court improperly admitted certain items of evidence offered through the witness Lautner. The evidence complained of, consists of five specific items (App. Br. pp. 128-131).

In view of the assiduous care exercised by the trial judge, throughout the case, to protect the rights of these appellants, it is difficult to believe that they seriously urge the citations of error set forth in this section of their brief. Considered in the light of the entire case, there can be no doubt but that this evidence was properly admitted.

This court pointed out in *Dennis* at page 231 that it is the duty of the trial court to decide any preliminary issue of fact on which the competency of evidence depends. The propriety of the trial judge's ruling in the instant case is clearly supported by the accepted principles of conspiracy law as set forth in numerous decisions. Conspiracy is a partnership in criminal purposes and the declarations of a co-conspirator in furtherance of the conspiracy are admissible against all of the conspirators. *United States* v. *Gypsum Co.*, 333 U. S. 364, 393; *Agnello* v. *United States*, 269 U. S. 20; *Hitchman Coal and Coke Co* v. *Mitchell*, 245 U. S. 229, 249; *United States* v. *Peoni*, 100 F. 2d 401 (C. A. 2). Declarations of a co-conspirator are admissible even though the conspirator is not joined as a defendant or is unnamed. *Clune* v. *United States*, 159 U S. 590; *Prichard* v. *United States*, 181 F. 2d 326 (C. A. 6), affirmed

339 U. S. 974; *United States* v. *Stein*, 50 F. 2d 1025 (C. A. 2) certiorari denied 284 U. S. 671; *Allen* v. *United States*, 4 F. 2d 688 (C. A. 7) certiorari denied *sub nom. Hunter* v. *United States*, 267 U. S. 597. Moreover, it is unnecessary for the jury to find that the individual defendant was a party to the original agreement. If he joins the conspiracy later, he becomes equally liable with the original conspirators, *United States* v. *Gypsum, supra; United States* v. *Buckner*, 108 F. 2d 921 (C. A. 2) certiorari denied 309 U. S. 669. As was pointed out in *Coates* v. *United States*, 59 F. 2d 173, 174 (C. A. 9):

> "It is immaterial when any of the parties entered the polluted stream. From the moment he entered he is as much contaminated and held as though an original conspirator."

It is unnecessary to show that the conspirator knew the full scope of the conspiracy or participated in carrying out each detail. He need not be acquainted with each of his co-conspirators or know the exact part played by each of them. *Blumenthal* v. *United States, supra; United States* v. *Manton*, 107 F. 2d 834 (C. A. 2) certiorari denied 309 U. S. 664. It is also immaterial that some of the conspirators are wholly or partly strangers to each other, when the proof shows that all are engaged in a common unlawful purpose, and each contributed his part to the furtherance of the conspiracy. *Jezewski* v. *United States*, 13 F. 2d 599, 602 (C. A. 6), certiorari denied 273 U. S. 735; *Poliafico* v. *United States*, 237 F. 2d 97 (C. A. 6). See also *Wellman* v. *United States, supra*, at page 768.

We turn now to a brief discussion of Lautner's testimony concerning which appellants complain:

(a) As to the statements made by the co-conspirator Dennis at the 1945 National Convention there can be no

question. Dennis was named a co-conspirator in the instant case. The appellants concede that Dennis is an authoritative spokesman for the Communist Party of the United States of America and in fact introduced written statements prepared by him as part of their case (Def. Ex. O. Tr. 7765). Thus the statements made by Dennis were authoritative statements made by a co-conspirator in furtherance of the conspiracy. That the evidence did not establish that any of the appellants were present is of no moment in the light of the established principle of conspiracy law cited heretofore.

(b) The chart illustrating the organizational structure of the Communist Party (Gov't. Ex. 34) was admissible on at least two grounds. It was a graphic representation of the Communist Party organization which included the Communist Party of Connecticut, as evidenced by the testimony of practically every witness; secondly, it was a replica of a chart used by Lautner in official Communist Party classes. It is significant also that appellants have not challenged its accuracy in any respect. Contrary to appellants' contention, the evidence in the case clearly establishes that each of these appellants were intimately connected with the Communist Party structure as described by Lautner and represented on the chart.

(c) and (d) Lautner's testimony with regard to the secret meetings held at his apartment in New York City during 1948 was properly admitted. It established the fact of the organization of the underground apparatus and the institution of security measures within the Party which, the evidence establishes, became part and parcel of the modus operandi of the Communist Party of Connecticut. Furthermore the indictment in the instant case alleges that the conspiracy existed not only in Connecticut but "elsewhere" as well. Certainly evidence as to the conspiratorial activities of these appellants and their

co-conspirators is admissible irrespective of where it took place, if it was in furtherance of the conspiracy charged in the indictment.

(e) The evidence with reference to the classes conducted by Lautner in 1947 and 1948 was properly admissible as bearing on his qualifications to give opinion testimony as well as evidence of the overall objectives of the conspiracy.[51]

B. Declarations of Co-Conspirators.

Appellants argue that certain statements made at Communist Party meetings and classes and which were admitted as declarations of co-conspirators in furtherance of the conspiracy should not have been admitted. It is their contention that the persons who made these statements were not shown to be in any position of leadership in the Party (App. Br. pp. 132-137).

This court has on many occasions discussed the criteria for ascertaining the admissibility of declarations made by persons charged with participation in a criminal enterprise. In the *Dennis* case *supra* Judge Hand stated at page 230:

"In this circuit we have repeatedly stated that such

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[51] In *United States* v. *Mesarosh*, 223 F. 2d 449 (C. A. 3), reversed on other grounds 352 U. S. —, the court stated:

> "But the hierarchial rung upon which a conspirator perches is not relevant because it is the existence and nature of the conspiracy which gives rise to the danger. The activities of the ringleaders constitute a clear and present danger because the tentacles of their authority reach into all parts of the country to give direction to their subordinates, without whom the leaders would probably be helpless. In effect, the larger the conspiracy, the more likely and the more imminent the danger, and all members of that group possessing the necessary intent are equally guilty."

declarations are competent against the accused in a prosecution for conspiracy, or for any other concerted venture, when, but only when, they are made in execution of an enterprise—'a partnership in crime'—to which the accused and the declarant are both parties, and that the enterprise must itself comprise making some such declaration as a step in its realization."

After a resume of the positions held in the Communist Party of the United States of America by the defendants in *Dennis*, Judge Hand continued:

"All had been affiliated with the Party in other capacities for many years; some had even been to Moscow to absorb the teachings of the Russian Party. Obviously, no reasonable person can doubt that they were aware of the teachings and advocacies which are spread throughout the autnoritative texts, and that these were used to indoctrinate pupils. A colloquy which arose in a class between a teacher and a pupil, or the address of a speaker at a public meeting of the Party, were therefore declarations made in execution of the common enterprise and they fell directly within the general rule and were plainly competent. This accounts for all the declarations cited in the brief which were admitted, except that of Mrs. Cane, to whom the informer, Hidalgo, was referred when he wished to joint the Party. Since she was a member of the executive of a club in New York, it was reasonable to infer, both that she was acquainted with the Party doctrines, and that what she said was in execution of the Party purposes; and therefore her declarations constitute no exception to the rule."

It requires but a cursory examination of the record to determine that in each of the four examples pointed out by appellants, the foundation for the admissibility of

the statements were in accordance with the criterion laid down in *Dennis*. Each of the speakers held a higher position in the Party than did Mrs. Cane in *Dennis*.[52] Each of the statements were made at official Party meetings by persons in a position to know the objectives of the conspiracy. These appellants were not inactive bystanders, as the argument would seem to imply, but full fledged participants in every phase of the conspiracy, and as such shared the responsibility for all acts and statements shown to be in furtherance of the conspiracy. Appellants use of such phrases as "common membership in an unincorporated association" (App. Br. p. 135) and "guilt by association" (App. Br. p. 136) are meaningless in the light of the evidence in the instant case which has established the appellants' complete and active support of the conspiracy.

C. Opinion Testimony.

Appellants allege error in that the witness Lautner was permitted to testify concerning the meaning of Marxism-Leninism and as to the aims and objectives of the Communist Party of the United States of America.

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[52] (a) In 1949 Lucille Bilotti was Secretary to the State Youth Commission of the Communist Party of Connecticut (Tr. 5586) and represented the Communist Party at the National Conference of the Labor Youth League (Tr. 5586-5587).

(b) Joe Holden was a member of the Negro Commission of the Communist Party of Connecticut (Tr. 5175; 5408) and attended other Communist Party meetings as well (Tr. 6306-6312; 6312-14).

(c) Priscilla Small was Chairman of the Youth Branch of the Communist Party in 1949, and a member of the Executive Board of the Youth Branch of the Communist Party of New Haven (Tr. 5580).

(d) Louise Margolin was chairman of the Hill Club and a member of the New Haven County Section Committee of the Communist Party of Connecticut (Tr. 5661-5664).

In *Dennis* this court, in discussing the admissibility of the expert testimony of Budenz which was in substance similar to Lautner's testimony in the instant case, stated at page 229:

> "He was as well qualified *as an expert* to know what that meaning was as anyone could be; and we cannot see any more reason to exclude his testimony than to exclude the evidence of any other part of the mutual understandings of the defendants. As for the rule against conclusions, it is at most only one of convenience, and in this case every consideration of convenience made against its imposition." (Emphasis supplied.)

In *Flynn* both Budenz and Lautner were witnesses but this court found it unnecessary to deal again with the admissibility of their expert and opinion testimony. However, in the *Frankfeld* case, *supra*, Judge Parker, who wrote the opinion, stated, with reference to Lautner's testimony, at page 689:

> "It is difficult to see, however, how better evidence of the teachings and purposes of a party could be obtained than from the testimony of those who heard and participated in the teachings sponsored by the party.
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> • • • •
>
> "Where the matter under inquiry is properly the subject of expert testimony, it is no objection that the opinion sought to be elicited is upon the issue to be decided. [Citing cases.]
>
> There was no invasion whatever of the province of the jury. They were allowed to consider the expert testimony along with the documentary and factual evidence upon which it was based and all other evidence in the case in arriving at a verdict. See *United*

States v. *Johnson*, 319 U. S. 503, 519, 63 S. Ct. 1233, 87 L. Ed. 1546."

See also *Wellman* v. *United States*, 227 F. 2d 757, 769 (C. A. 6).

The remainder of appellants' argument is directed toward matters pertaining to the credibility of the witness. The fact that Lautner had testified in a number of prior proceedings and that he has received his principal income from the Department of Justice for the past few years, were matters to be considered by the jury, for whatever significance they might wish to give them, in considering his credibility as a witness. The verdict in the instant case, as well as in the prior cases in which he has testified, is ample refutation of appellants' arguments as to his credibility.

III

The appellants have no constitutional right to waive trial by jury without the consent of the Government and the approval of the Court.

On September 22, 1955, appellants through their attorneys, filed with the Court a motion for leave to be tried by the Court rather than by jury. On September 27, 1955, the Government, after due consideration, refused to consent to a waiver of trial by jury.

On October 3, 1955, Judge Anderson, relying on Rule 23(a), Federal Rules of Criminal Procedure, which conditions the power of defendants to waive a jury trial in a criminal case upon consent of the Government and approval of the Court,[53] denied defendant's motion in a

[53] Rule 23(a) makes the following provision: "Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the Court and the consent of the Government."

Memorandum of Decision dated October 3, 1955. Thereupon a jury was properly[54] impaneled, the case was tried, and a verdict of guilty returned against appellants.

Appellants contend that Rule 23(a) is unconstitutional on its face and as applied for the following reasons:

> (a) The Rule violates the Fifth and Sixth Amendments which guarantee an accused the right to elect intelligently to waive a jury trial when he deems such action necessary to obtain a fair and impartial trial (App. Br. 146).
>
> (b) The Rule vests in the Government of the United States the right to a jury trial in violation of established usage, the Sixth Amendment, and the due process provisions of the Fifth Amendment (App. Br. 156).

While Article III, Section 2, Clause 3, of the United States Constitution and the Sixth Amendment guarantee an accused the right to trial by jury in a criminal case, there is nothing in the Constitution or laws of the United States which grants to an accused person the right to waive a trial by jury.

Rule 23(a) codifies a practice which has existed in the Federal Courts for many years and which received the sanction of the Supreme Court in 1930. See 4 Barron, *Federal Practice and Procedure* 160, §2122. See also *Patton* v. *United States*, 281 U. S. 276.

It was not until the decision in the *Patton* case that it

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[54] Rule 24(a) of the Federal Rules of Criminal Procedure permits the Court to conduct the examination of jurors on the voir dire. This Court has recently reaffirmed the proposition that the supervision of the voir dire is within the discretion of the trial judge. *United States* v. *Lebron et al.*, 222 F. 2d 531, 538 (C. A. 2, 1955).

was finally determined that the right to a trial by jury could be waived. In the *Patton* case, the Supreme Court held that the provisions of Article III, §2, cl. 3 of the Constitution of the United States providing that "The trial of all crimes * * * shall be by jury" did not constitute a mandatory requirement which could not be waived. The Court further held that, construing Article III, §2, cl. 3, *in pari materia* with the Sixth Amendment, trial by jury was not established as a part of the frame of Government; that the District Courts had jurisdiction to try a criminal case without a jury; that there was nothing in the theory of public policy which denied to an accused the *power* to waive trial by jury and that this power extended to felonies as well as misdemeanors.

It is true that the *Patton* case involved a situation where the trial was continued with eleven jurors after one of the jurors had become incapacitated, but the Court rejected the distinction sought to be made between the complete waiver of a jury and the consent to be tried by less than 12 jurors. In substance the *Patton* case affirmed the *power* of a defendant in a criminal case to waive his constitutional *right* to be tried by a jury.

Although the *Patton* decision spoke of the power of an accused to waive a trial by jury as a privilege, it did not state that this privilege was an absolute one. On the contrary, at pages 312 and 313, the Court said:

> "In affirming the power of the defendant in any criminal case to waive a trial by a constitutional jury and submit to trial by * * * the court, *we do not mean to hold that the waiver must be put into effect at all events. That perhaps sufficiently appears already.* Trial by jury is the normal and, with oc-

casional exceptions, the preferable mode of disposing of issues of fact in criminal cases above the grade of petty offenses. In such cases the value and appropriateness of jury trial have been established by long experience, and are not now to be denied. *Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant.*" (Emphasis supplied.)

In sanctioning what to many courts had seemed an impairment of a constitutional right which had been jealously guarded through centuries of Anglo-Saxon jurisprudence, the Supreme Court appropriately defined and delimited within precise bounds the conditions and circumstances under which trial by jury could be dispensed with.

This rule has been reaffirmed in more recent years by several Circuit Courts of Appeal. In a case before this Court, *United States* v. *Dubrin*, 93 F. 2d 499, cert. denied, 303 U. S. 646, the defendant sought to waive a jury trial, but the prosecution refused to consent thereto. The trial court thereupon refused to try the case without a jury. Judge Augustus N. Hand held that this refusal did not constitute error, in view of the "explicit announcement" in the *Patton* case to the effect that consent of the Government is required in order to permit the defendants to waive a trial by jury. See also, *Rees* v. *United States*, 95 F. 2d 784, at 790 (C. A. 4); *C. I. T. Corp. et al.* v *United States*, 150 F. 2d 85, at 91 (C. A. 9); and *Irvin* v. *Zerbst*, 97 F. 2d 257, 258 (C. A. 5), certiorari denied, 305 U. S. 597.

The cases relied upon by appellants do not announce a rule contrary to that applied in the above cases, but are all based upon the waiver of a separate and distinct right not involved herein (See App. Br. 151-152), and as a result have no application to the instant case. Further, appellants cite no authority in support of their position that Rule 23(a) is unconstitutional either on its face or as applied in this case. Indeed, they cannot, for there is none. All of the Court decisions are to the contrary.

In addition, the appellants erroneously report the case of *Adams* v. *United States ex rel. McCann*, 317 U. S. 269 (App. Br. 150) as holding that the accused may waive a trial by jury without the consent of the Government, when in the *Adams* case the prosecution had in fact consented to the waiver. In referring to the *Patton* case the Supreme Court at page 277 said:

> "We have already held that one charged with a serious Federal crime may dispense with his constitutional right to jury trial, where this action is taken with his express intelligent consent, where the *Government also consents* and where such action is approved by the responsible judgment of the trial court." (Emphasis supplied.)

Nowhere in the *Adams* opinion did the Court consider or discuss the question of refusal by the prosecution to consent to a waiver, and the consequent refusal of a court to try a case without a jury. We submit, therefore, that there is nothing in that case to warrant the conclusion that the *Patton* rule, relating to consent by the prosecution, has been overruled or disapproved by the Supreme Court.

In any event, even if we assume, *arguendo*, that the trial court's refusal to try the case without a jury was

error, no prejudice resulted which would warrant reversal of the conviction. There being no prejudice, this Court should disregard the error.[55]

At the outset of their discussion of the question of prejudice (App. Br. 141) appellants alleged that "even the court had difficulty persuading most of them (the veniremen) that they were not and should not be prejudiced." Even the cold record of this trial, which cannot reflect the calm, dispassionate and painstaking manner in which the learned trial judge went about his task of securing a jury, is witness to the falsity of this statement. Not only were the questions asked the individual jurors by the Court on the voir dire carefully designed to bring about the exclusion of jurors unable to judge the case impartially, but the Court permitted unlimited submission of questions by counsel. When the Court "had to depart from prepared questioning" (App. Br. 143) this usually occurred as a result of questions propounded to the venireman through the Court by appellants' counsel.

In an attempt to demonstrate that the trial judge "persuaded" jurors who were affected by bias that they were not so affected, appellants have set forth certain questions and answers from the voir dire examination of Mrs. Grace L. Colberg, Juror No. 4 (App. Br. 142-143). The inferences appellants attempt to draw with regard to the alleged bias of Mrs. Colberg are not borne out by her entire voir dire examination (Appendix III, Entire Voir Dire Examination of Mrs. Colberg). However, we need only point out her unequivocal answers at

[55] Rule 52(a) of the Federal Rules of Criminal Procedure states: "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

pages 510-511 of the record to clearly demonstrate that she approached the case with a fair and open mind. The same is true of Jurors Finn, Hotchkiss, Terrell and Kain who are also listed by appellants as persons who were influenced by the "persuasion" of the trial judge.

Putting aside for a moment the question of whether or not these five jurors were in fact biased, the trial judge, who had the veniremen before him and was able to judge them with a far more dispassionate eye than any of the parties, felt them to be qualified jurors who would render their verdict based not upon any preconceived notions of their own, but solely upon the evidence presented. If either the Government or the appellants felt that, for one reason or another, a particular juror should not sit, a remedy by way of peremptory challenge was always available to them. The Court allowed the appellants sixteen peremptory challenges to the panel of twelve,[56] which were not exhausted by the appellants. At the time the twelfth juror was seated two peremptory challenges remained unused,[57] the appellants accepting the panel as seated. Even more compelling, however, is the fact that when Mrs. Colberg was seated as Juror No. 4, appellants' prime example of a biased juror could (App. Br. 142) have been challenged peremptorily, since at the time of her selection nine challenges remained unexercised. At the time of the seating of jurors Finn,

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[56] Under Rule 24(b) of the Federal Rules of Criminal Procedure appellants were entitled to ten peremptory challenges but the court, in the exercise of its discretion, granted them six additional challenges.

[57] By failing to exercise their peremptory challenges, the appellants have, it seems, waived any right they might otherwise have to contend that the court erred in seating a particular juror. *Holt* v. *State*, 121 S. W. 1072, 1073; *Shoop* v. *State*, 190 S. W. 2d 988, 989. See also *Ex Parte: Spies*, 123 U. S. 131; 31 *Am. Jur.* 646 (*Jury*, Section 118).

Hotchkiss, Terrell and Kain,[58] there were respectively 15, 13, 8 and 6 peremptory challenges remaining for the use of the appellants.

Even if no peremptory challenges remained for the use of the appellants at the time the five above-mentioned jurors were seated, the Court, under Rule 24(b) of the Federal Rules of Criminal Procedure, has power in its discretion to grant additional peremptory challenges in cases involving more than one defendant.

> "The principal reason for granting additional peremptory challenges is to assist in the selection of a fair and impartial jury, and this power and discretion of the Court carries on until such time as the trial jury is selected to hear the case." *United States* v. *Fujimoto et al.*, 107 F. Supp. 865 (D. C. D. Hawaii 1952).

As stated before, not only did appellants fail to exercise the sixteen peremptory challenges afforded them, but they did not request additional challenges. Rather when the panel of twelve was seated they stood mute, raising no objection to the panel as constituted.

It hardly need be mentioned that, had counsel exhausted their peremptory challenges, the trial judge, at all times extremely zealous to afford appellants every means possible to obtain a fair and impartial jury, would have provided them with the additional challenge or challenges deemed necessary by counsel to protect their clients. Indeed, any failure on the part of the Court to

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[58] At page 143 of their brief appellants use these jurors as examples of instances wherein the Court "persuaded" jurors that they were unbiased.

so provide might well have constituted an abuse of discretion and consequent reversible error.

The exhaustive voir dire examination conducted by the Court covered 1,387 pages of the transcript of the trial and ten Court days. The content of the questions asked the veniremen, the number excused by the Court for cause and the acceptanace of the panel by counsel, considered together with the long deliberation which took place before the jury returned its verdict, disprove with finality appellants' contention that a verdict of guilty was returned by a jury which was motivated by bias and prejudice directed against them, rather than one which decided the case solely on the evidence presented.

Trial by jury has always been, and still is, generally regarded as the normal and preferable mode of disposing of issues of fact in civil cases at law, as well as in criminal cases. *Dimick* v. *Schiedt,* 293 U. S. 474, 485-486. As pointed out by the Circuit Court of Appeals for the Fourth Circuit in the *Rees* case, *supra* at page 790:

> "It cannot be conceived how a trial by a jury, presided over by a judge, could possibly be prejudicial to an accused. It is not only the province but the duty of the judge to pass upon the verdict of the jury and the sufficiency of the evidence to support the verdict. Under these fundamental and elementary principles, invariably governing the administration of criminal law in our courts, the accused, when tried by a jury, has every advantage he could possibly have in a trial before a judge alone. In effect he has trial by the judge in addition to the trial by the jury."

Appellants also contend that failure on the part of Government counsel to give a reason for declining to

acquiesce in appellants' request to waive a trial by jury makes it apparent that the United States Attorneys were "unconcerned with giving the appellants the fairest possible trial, but sought to obtain the trial most likely to convict" (App. Br. 146); basing this fallacious assumption on an unfounded theory that "a conviction in this type of case is more readily obtainable from a jury than a court" (Ibid.) Needless to say, such statements by counsel for the appellants find no support in the record.

Appellants' argument on this question, accusing the Government attorneys of subverting justice (App. Br. 162), and generally questioning the motives of the Government in refusing its consent to a waiver of jury trial (App. Br. 146, 161) in no way aids this Court in considering the legal questions involved, but rather serves only as an attempt to submerge the issues. The many reasons which compelled the United States to invoke certain provisions of Rule 23(a) need not be repeated here. Judge Anderson recognized certain of them in his Memorandum of Decision on this question, *supra*. He did not find it necessary, while sustaining the Government's position, to question its motives; indeed, he fully recognized the reasons for the Government's considered judgment in this matter:

> "In the present case, the Goverment gives as its reason for withholding consent that trial by jury is the normal and accepted method to be used in disposing of serious criminal cases, and that considering the nature of the charge, it is the more appropriate means of placing these accused, to use an ancient phrase, 'on their country for trial.' It might also be urged that these defendants represented by court-appointed counsel might, in the event of their conviction by the Court, make the claim that the court-appointed Counsel in the interest of shortening the

trial had persuaded them to waive their constitutional right to a trial by jury—thus raising an issue which the Government feels now may be prevented by insisting on a jury trial."[59]

In its memorandum the Court went on to say:

"Much of the language of the Patton case and in the latter case of *Adams* v. *United States* 317 U. S. 269 support the defendants' very compelling argument that the election of trial by jury or by the court alone should rest with an accused. At present, however, we are concerned not only with the construction of these cases but with a rule having the force of a statute. *I am not persuaded that it is unconstitutional.* The main provision of the rule requires the consent of the Government before a waiver of jury trial by the defendants can become effective. *It is not necessary to discuss any reasons which might be advanced by the Government in support of its position. The requirement is unconditional and this court is bound by it. United States* v. *Dubrin*, 93 F. 2d 499 at 505". (Emphasis supplied.)

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[59] It should be noted in this connection that appellants' motion to waive jury trial was filed on September 22, 1955. The Court had appointed counsel on September 7 and September 15, 1955. Prior to the filing of this motion appellants gave no indication that they were becoming disenchanted with the prospect of a jury trial. In fact, they had succeeded in securing the dismissal of a previous indictment returned against them on the grounds that the jury array had been improperly constituted. This had resulted in the establishment of a new system for empanelling juries in New Haven. See Judge Anderson's Memorandum of Decision on Motions Directed Against the Indictment dated July 2, 1955.

Further, at the time the motion was filed, the Clerk had already summoned 150 veniremen as potential jurors. The case was, at that time, assigned for trial in September.

Neither the historical background of the Constitution nor Colonial History, as defendants contend (App. Br. 153), indicate that the determination whether there shall be a trial by a jury or by the court was one within the exclusive province of the accused. On the contrary, the following excerpts from early Colonial laws support the view that the mutual consent of both parties was necessary to make a waiver of a trial by jury effective.

Thus, Libertie XXIX of the "Body of Liberties" of 1641,[60] printed in the Colonial Laws of Massachusetts, 29-61, 39 reads as follows:

> "In all actions at law it shall be the libertie of the plaintife and defendant *by mutual consent* to choose whether they will be tryed by the Bench or by a Jurie, unlesse it be where the law upon just reason hath otherwise determined. *The like libertie shall be granted to all persons in criminall cases:*" (Emphasis supplied.)

In New Hampshire by the Cutt Laws of 1679 (I. N. H. Province Laws 25) it was provided:

> "It is further enacted: That all trials whether capital or criminal, or between man & man, both representing maritime affairs as well as others, be tried by a jury of Twelv good & Lawful men according to the commendable custom of England; Except the parties concerned do refer it to the Bench: * * *"

In view of the foregoing cases and the explicit language contained in Rule 23(a), Federal Rules of Criminal Procedure, the Government submits that the defendants have no right, constitutional or otherwise, to demand and receive a non-jury trial without the consent of the Government and approval of the Court.

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[60] This was the first document resembling a Constitution in Massachusetts.

IV

The enactment of the Communist Control Act of 1954 does not deprive appellants of a fair and impartial trial, nor does that Act repeal or amend the Smith Act.

Appellants contend (App. Br. 163) that since the Congress of the United States has determined legislatively, in Section 2 of the Communist Control Act of 1954 (50 U. S. C. 841), that the Communist Party does in fact advocate the overthrow of the Government by force and violence, the Act converts the Smith Act into a bill of attainder and, deprives the appellants of the possibility of a fair trial in violation of the due process clause of the Fifth Amendment. The Government submits that both contentions are untenable.

A. The Communist Control Act of 1954 Contains Nothing on Its Face Which Repeals or Amends the Smith Act.

The Communist Control Act on its face is "An Act to outlaw the Communist Party, to prohibit members of Communist organizations from serving in certain representative capacities, and for other purposes."

Nowhere, in the eleven long and detailed sections of the Control Act, is there any reference to the Smith Act, nor is there any statement made therein which might reasonably be construed to indicate an intent on the part of Congress that the Control Act repeal, amend, or supplement the Smith Act. On the contrary, the Control Act contains specific language with reference to the Internal Security Act of 1950, and if it had been the

intent of the Congress to repeal, amend or supplement the Smith Act similar language with reference to the Smith Act would have been included in the Control Act. The Control Act is primarily a registration act with no criminal penalties as such. There are, of course, sanctions which may be imposed for failure to conform with the provisions of the Act, but these are to be made only after an appropriate determination has been made that a particular organization comes within the purview of the Act. The Act itself operates only to implement the rationale and basis of the Internal Security Act. In all of the eleven sections of the Control Act there are nine references to the Internal Security Act, not including sections 10 and 11, which are direct amendments to the Internal Security Act. (See U. S. Code, Congressional and Administrative News, No. 18, 1954 at page 7227 for a chart of these references in the United States Code.)

It is obvious, therefore, that the Control Act contains nothing on its face which either amends, repeals or even refers to the Smith Act.

While keeping this fact in mind, it would be fruitful at this point to review briefly the legislative history of the Control Act.

When the Senate bill, which later, with changes, became the Communist Control Act of 1954, was originally reported out from the Committee on the Judiciary, as Bill No. S.3706, on July 6, 1954, it was reported as a bill to amend the Subversive Activities Act (Internal Security, Chapter 23, Title 50 U. S. C.). It contained no reference to the Smith Act. It likewise contained no reference to that Act in any of the provisions which later became Sections 2, 3, 4, and 5 of the the Control Act.

On August 16, 1954, there were offered several bills to take the place of S.3706. One such bill entitled "An Act to Outlaw the Communist Party" was ordered to be printed together with the amendments thereto submitted by the House of Representatives. Provisions similar to Sections 2, 3, 4, and 5 of the present Act were added. Some of the offered bills, specifically one submitted by Senator Humphrey of Minnesota, provided that membership in the Communist Party, *per se*, would be a criminal offense. All of these bills were rejected.

The Senate did not wish to enact legislation making membership *per se* a crime, nor did it wish in any manner to enact legislation which would impede the enforcement of the Smith Act. The language of the bill, finally enacted as the Communist Control Act, contains findings of fact which serve to show the rationale of the statute itself. These findings are *sui generis* to the Control Act itself. This is obvious from the language of Section 2 of the Act which relates to outlawing the Communist Party. The description of the activities of the Party found therein is similar to the description of the Party found in the first section of the Subversive Activities Act of 1950 (See Section 781, Title 50, U. S. C.), against which, it might be pointed out, the appellants make no complaint.

During the Senate debates relative to this bill, Senator John Marshall Butler of Maryland, of the Senate Judiciary Committee, explained to members of that Committee that the bill as finally voted out would not do two things: (a) it would not seek to actually outlaw the Communist Party, and (b) it would not interfere with the operation and prosecution of the Smith Act. See *Congressional Record*,

Vol. 100, No. 162, August 19, 1954, pp. 14392-14399.[61] Senator Humphrey, on page 14394 of the Record, in conceding defeat of his efforts to cause the proposed bill to outlaw the Communist Party and to cause it to be an amendment to the Smith Act rather than the Internal Security Act, stated:

> "Maybe we did not strike as strong a blow as Hubert Humphrey would have liked to strike in the bill, but we have not injured the laws which are now on the books."

and later on page 14399:

> "So, Mr. President, on the basis that the Conference report is better and that one section of it might do some good in being a declaration that the Communist Party is an international conspiracy, I expect to vote for the report."

Senator Kefauver of Tennessee, whose question had been the basis for most of the debate, as to the effect of the new bill on the operation of the Smith Act, and who had been instrumental in the defeat of the Humphrey version, stated on page 14395:

> "On the basis that it is a better piece of legislation and an improvement, and on the basis that it does substantially take away the provisions of the Humphrey amendment, I shall vote for the Conference report. * * *
>
> I have now been assured that this will not adversely affect prosecution under the Smith Act or emasculate the Internal Security Act, so my principal objections have been met."

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[61] On page 14393 Senator Butler said that, "[t]he purpose of this amendment is to integrate this act into the Internal Security Act, and to make all of it a workable whole."

Therefore, the Government feels that, to assume, as have the appellants herein, that the Communist Control Act of 1954 was intended to amend or supplement the Smith Act is to make an assumption which runs counter to the express concern of Congress that the very thing suggested by the appellants should not happen. The legislative history of the Act, the alterations made in the bill by the Conference Committee, and the provisions of the act itself as finally passed show no intention to repeal or amend the Smith Act. Contrary to the position taken by appellants (App. Br. p. 165) the courts have consistently held that individual expressions of opinion, voiced by legislators during debates on proposed legislation, carry little weight when they are contrary to the clear legislative intent as reflected in the entire legislative history. In *United States* v. *Kung Chen Fur Corp.*, 188 F. 2d 577, 584 (U. S. C. C. P. A.), the court quoting from *Aldridge* v. *Williams*, 3 How. 9, 44 U. S. 9, stated:

> "* * * the judgment of the court cannot, in any degree, be influenced by the construction placed upon it [the statute] by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which will is spoken is in the act itself, and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary to the public history of the times in which it was passed."

B. The Communist Control Act of 1954 Does Not Amend the Smith Act by Implication.

The law is well established that the courts do not favor implied amendments of statutes. This point has been before the courts on numerous occasions. In the case of *United States* v. *24 Cans Containing Butter*, 148 F. 2d 365 (C. A. 5), certiorari denied 326 U. S. 752, the court stated at page 367:

> "Implied repeal or limitation of one act by another is never favored. It is not for the courts, unless the conflict between two acts is inescapable and compelling, to exclude from the coverage of an act matters which its terms expressly include, on the theory that another act whose general purpose seems inconsistent has impliedly repealed or limited the act under review. Only where it is found that it is not possible for both acts to co-exist can an act be held to repeal, or limit another, and then only in respect to the precise point of conflict."

More recently in an Illinois case, *Swettman* v. *Remington Rand*, 65 F. Supp. 940 (D. C. Ill.), Judge Briggle stated at page 942:

> "• • • Implied amendments or repeals are not favored by the law and such an interpretation should not be given to the Act unless the intention to do so clearly appears."

In the case of *Rosenberg* v. *United States*, 346 U. S. 273, a somewhat analogous situation was presented to the United States Supreme Court. The question under consideration was whether the Atomic Energy Act of 1946

superseded the earlier Espionage Act. Mr. Justice Clark, in his concurring opinion, stated at page 294:

> "Where Congress by more than one statute proscribes a private course of conduct, the Government may choose to invoke either applicable law: 'At least where different proof is required for each offense, a single act or transaction may violate more than one criminal statute.' *United States* v. *Beacon Brass Co.*, 344 U. S. 43, 45. See also *United States* v. *Noveck*, 273 U. S. 202, 206; *Gavieres* v. *United States*, 220 U. S. 338. Nor does the partial overlap of two statutes necessarily work a *pro tanto* repealer of the earlier act. *Ibid.* It is a cardinal principle of construction that repeals by implication are not favored. When there are two acts on the same subject, the rule is to give effect to both if possible . . . 'the intention of the legislature to repeal must be clear and manifest' . . . It is not sufficient . . . to establish that subsequent laws cover some or even all of the cases provided for by the (prior act); for they may be merely affirmative, or cumulative, or auxiliary. There must be a 'positive repugnancy between the provisions of the new law, and those of the old.' *United States* v. *Borden Co.*, 308, U. S. 188, 198."

A fortiori the rationale of the Supreme Court in *Rosenberg* is controlling here by reason of the fact that there is no overlapping or conflict between the provisions of the Smith Act and the Control Act. It is apparent, therefore, that the Communist Control Act of 1954 is not in conflict with, nor can it be construed as amending the Smith Act by implication.

C. The Enactment of the Communist Control Act of 1954 Does Not Deprive Defendants of a Fair and Impartial Trial.

It is appellants' further contention that, since the Congress of the United States has legislatively determined, in Section 2 of the Control Act, that the Communist Party does in fact advocate the overthrow of the Government by force and violence, the appellants were deprived of an opportunity of defending against that particular essential element of the offense with which they were charged.

The appellants have apparently made the erroneous assumption either that the provisions of the Smith Act must be read in conjunction with all the sections of the Communist Control Act, that is, that both statutes constitute a single law, or, that the Control Act specifically amends certain provisions of the Smith Act. The Government has already shown that there has been no amendment and at a further point in this brief will discuss, in some detail, its contentions that by no stretch of the imagination may the Control Act be viewed as being *in pari materia* with the Smith Act (*infra*, pp. 117 et seq.), as the appellants would have the Court believe.

The appellants argue in effect that legislative findings of fact have the force of law, in and of themselves. Whatever may be the effect of the "Findings of Fact" with regard to the Communist Control Act, these appellants were not precluded from raising the defense that the Communist Party does not, in fact, teach and advocate the violent overthrow of the Government of the United States. In fact a substantial part of the defense

case was an attempt to disprove the overwhelming evidence offered by the Government which established the violent revolutionary objectives of the Party. An examination of appellant's contentions indicates that they assume that the "Findings of Fact" found in Section 2 of the Control Act are such as would estop rebuttal. Such a contention is not borne out by any reported case. See e. g. *American Communications Association, et al.* v. *Douds*, 339 U. S. 382, 400.

In support of this assumption, appellants also rely upon *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.) reversed and remanded 351 U. S. 115 as standing for the proposition that the legislative findings are binding on the court in all proceedings in which the nature of the Communist Party is in issue. (App. Br. 167-168). Such is not the purport of the *Communist Party* case. Although the court did point out that "if it appears Congress has power over the subject matter of a statute, and if the findings of fact are not baseless but are based upon extensive investigation, the courts are to adopt these findings", nothing in the decision indicates that the courts are precluded from making independent findings based on the evidence presented at the trial. In the *Communist Party* case the Subversive Activities Control Board did not rely upon the Congressional findings but made independent findings "based upon the evidence adduced before it".

In the instant case the Government had and carried the burden of proving all of the essential elements of the offense charged, just as if the Communist Control Act had never been passed, and the appellants had a full and ample opportunity to rebut the Government's proof, which they failed to do.

Having taken the first erroneous step, it became necessary for the appellants to take a further step and claim that these "Findings of Fact" of the Control Act must now be propelled bodily into a different statute, the Smith Act which was enacted fourteen years before the Control Act for an entirely unrelated purpose. On its face such an assumption is without foundation.

That there exists in the United States some antagonism and hostility to the doctrines of communism on the part of the American citizenry is not the prime issue. It is true, as was pointed out by this Court in its decision in *Flynn*, the increasingly popular belief that communism is committed to the overthrow of our Government by force and violence has found its expression in the Internal Security Act of 1950 (64 Stat. 987) and the Communist Control Act of 1954. However, the issue which confronts us now is whether it can be said that the existence of this belief on the part of the American people, and the enactment of the two above-described statutes by Congress form a sufficient basis in the law, as appellants contend (App. Br. 169), for a reversal of these convictions.

For a proper analysis of this question we turn to the opinion of Judge Learned Hand in answer to a similar contention made by the defendants in the *Dennis* case. At page 226, he stated as follows:

> "Next, it is urged that it was impossible in any event to get an impartial jury because of the heated public feeling against Communists. That such feeling did exist among many persons—probably a large majority—is indeed true; but there was no reason to suppose that it would subside by any delay which

would not put off the trial indefinitely. The choice was between using the best means available to secure an impartial jury and letting the prosecution lapse. It was not as though the prejudice had been local, so that it could be cured by removal to another district; it was not as though it were temporary, so that there was any reasonable hope that with a reasonable continuance it would subside. Indeed, as it turns out, it is probable that the trial was at a less unpropitious time than any that has succeeded it, or is likely to follow. Certainly we must spare no effort to secure an impartial panel; but those who may have in fact committed a crime cannot secure immunity because it is possible that the jurors who try them may not be exempt from the general feelings prevalent in the society in which they live; we must do as best we can with the means we have."

Similarly in *Flynn* the Court pointed out that to hold otherwise would be tantamount to a judicial proscription of the Smith Act. In refuting the defendant's contention in the *Flynn* case that there could be no proper trial of Communist Party members until public opinion concerning communism subsides, Mr. Justice Harlan stated:

"We think there is nothing in our concepts of constitutional due process which leads us to any such weird result."

In *United States* v. *Lightfoot*, 228 F. 2d 861 (C. A. 7) certiorari granted 350 U. S. 992 appellant raised substantially the same argument with regard to the Communist Control Act. The Court readily disposed of the contention at page 870:

"In effect, it is defendants' position that all per-

sons subject to prosecution under the Smith Act are immunized from prosecution indefinitely or as long as the Communist Control Act remains a part of the laws of this nation. We do not agree."

D. The Communist Control Act of 1954 and the Smith Act Are Not in Pari Materia.

Appellants contend that "the two acts taken together describe the group to be attainted and provide punishment by way of fine and imprisonment" (App. Br. 166), and that the effect of such a reading together "is to convert the provisions of the Smith Act involved in the instant indictment into a bill of attainder" (*Ibid*).

In the case of *United States* v. *Lightfoot, supra,* a Smith Act case, this issue was raised by defense counsel during the pretrial hearing. Counsel there urged that the indictment should be dismissed because the Communist Control Act of 1954 is "clearly *in pari materia* with the membership provision of the Smith Act, and as a result constitutes a Bill of Attainder and violates the First Amendment and the due process clause of the Fifth Amendment of the Constitution." It was argued that the Smith Act must be read in conjunction with the Control Act and that when so read it would constitute an unconstitutional application of the law to the defendant.

Lightfoot's argument was similar to appellants' contention in that he contended that the Communist Control Act eliminates the necessity of proof by the Government, in Smith Act cases, that the Communist Party teaches and advocates the overthrow of the United States Government by force and violence. This he con-

tended deprived him of the opportunity to disprove this element, an opportunity which was available to him prior to the enactment of the Control Act (App. Br. 165-167).

It is a generally accepted rule of statutory construction that, when statutes relate to the same person or thing, or to the same class of persons or things, and are common in purpose and scope, such statutes are *in pari materia* and should be considered together as though they constituted but one law. *Rosenberg* v. *United States*, 346 U. S. 273; *United States* v. *C. I. O.*, 335 U. S. 106.

However, this rule is used solely for the purpose of ascertaining legislative intent and will not be applied by the courts for the purpose of defeating the clear legislative intent of each statute. Nor, will it be invoked where the language of the statute is clear and unambiguous and its application is certain from that language. *Northern Pacific Railroad Co.* v. *United States*, 156 F. 2d 326, 328, and citations therein).

Similarly, the principle of *in pari materia* may not be used to delimit the scope of a prior statute by a later enactment where it is clear that the subsequent statute was not intended to serve as a restriction on the prior statute. (See *People ex rel Pellow* v. *Byrne*, 261 N. W. 326, 328, and citations therein).

A basic and strict requirement of the *in pari materia* principle is that the subject matter of both statutes be identical, and that the two statutes stand on the same footing in the mutuality of their application to the same individual or classes, relative to the same conduct. (See Sutherland on Statutory Construction, 3d Ed. Vol. 2, Sec. 5202, p. 535). This principle is clearly stated in

Corpus Juris Secundum, Statutes, Vol. 82, Sec. 366 (a), pp. 802-803, thusly:

> "Statutes which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose are in pari materia. On the other hand, statutes are not in pari materia which do not relate to the same subject and which have no common purpose and scope; and, although an act may incidentally refer to the same subject as another act, it is not in pari materia if its scope and aim are distinct and unconnected."[62]

In order for the Communist Control Act of 1954 to have any impact upon the Smith Act, there must be, between the two Acts, strict identity of subject matter, persons or classes, or persons affected by them, scope, purpose and aim, and the reading of them together must be necessary to clarify ambiguities which cloud congressional intent. As stated in Corpus Juris Secundum, *Id.* at page 814:

> "* * * [this] rule of construction may not be applied to narrow the compass of one statute by reference to another non conflicting and non repealing act, and restrictions placed on a power in one instance cannot be extended to another case for which they were not intended and for which another provision is made."

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[62] For further reference see: *Interstate Commerce Commission* v *Railway Labor Executives Association*, 315 U. S. 373, 380; *United States* v. *State of Louisiana*, 290 U. S. 70, 82; *United States* v. *Keegan*, 141 F. 2d 248, 253 (C. A. 2) reversed on other grounds and remanded 325 U. S. 478; *Capone* v. *United States*, 51 F. 2d 609, 614 (C. A. 7) certiorari denied 284 U. S. 669; *United States* v. *Gruber*, 39 F. Supp. 291, 294 (S. D. N. Y.); *Louisiana* v. *Mississippi*, 202 U. S. 1.

As pointed out previously (*supra*, p. 112), neither of these statutes conflict with the provisions of the other. There is a vast difference of subject matter; there is an obvious difference between the classes of persons to which they apply; and the scope, aim, and purpose of each statute is clearly different from that of the other.

We submit therefore that there is nothing in these two statutes which would justify application of the principle *in pari materia*. See *Capone* v. *United States*, 51 F. 2d 609 (C. A. 7), certiorari denied 284 U. S. 669, where the court stated:

> "Surely it cannot be said that statutes defining crimes are in pari materia merely because there is a likeness of subject matter. There must be identity of elements constituting the crime. *Identity, not similarity, must be the test in determining whether statutes defining crimes are in pari materia.* If one statute which defines a crime requires an element not present in another criminal statute, separate crimes are defined." (Emphasis added.)

CONCLUSION

We respectfully submit that the judgments of conviction as to all appellants should be affirmed.

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APPENDIX A

Organization chart of Communist Party United States of America, 1945-1948.

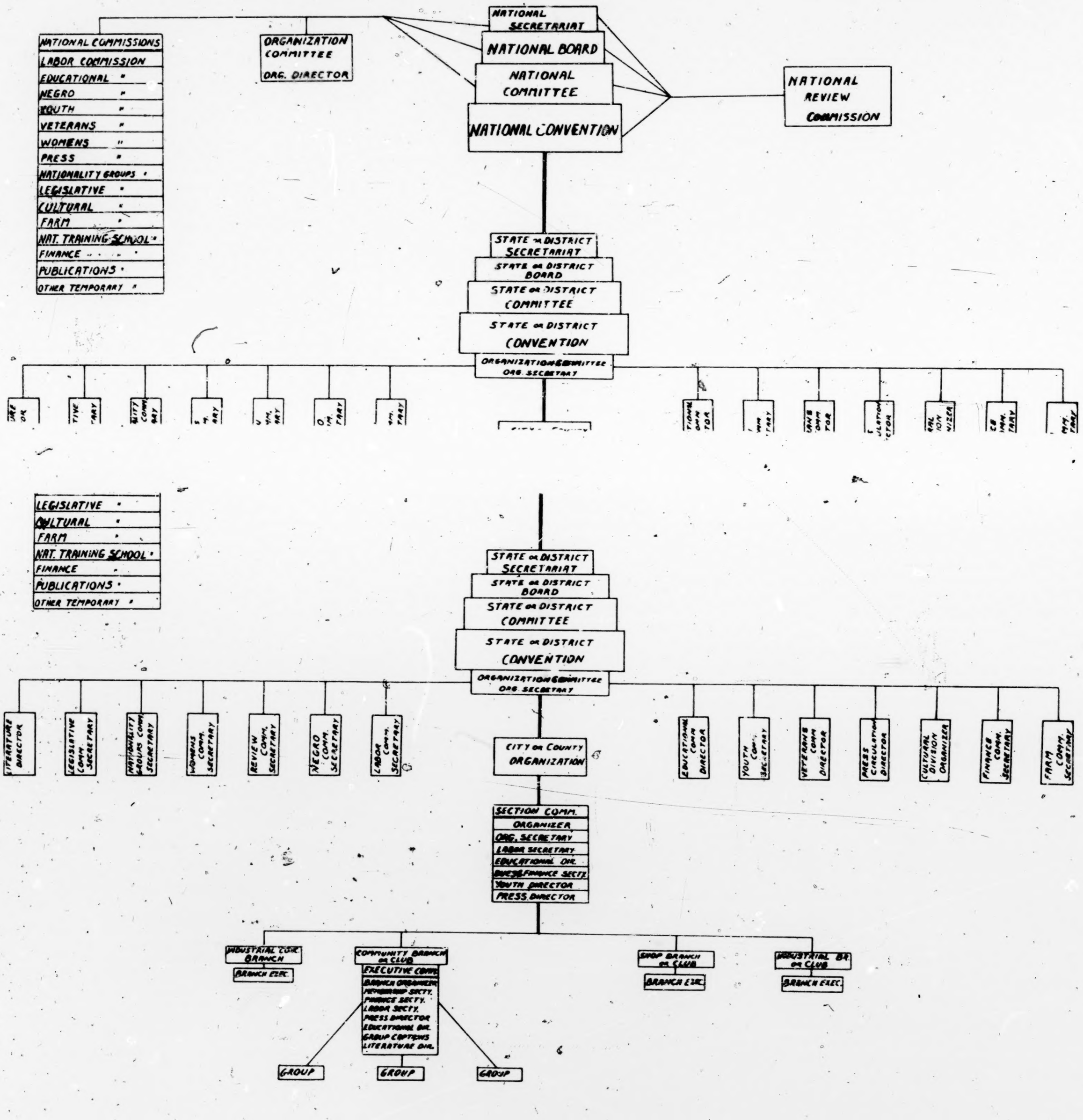
(PHOTOPRINT)

[*For convenience of Court and Counsel photoprint is bound in on the opposite page.*]

(p. 123)

Appendix A

ORGANIZATION CHART
OF
COMMUNIST PARTY - USA
1945-1948



Finding on Issue of Clear and Present Danger

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Criminal No. 9111

UNITED STATES OF AMERICA

v.

SIMON SILVERMAN, a/k/a Sid Taylor, et al

There is sufficient before me: in the record of this case, in the testimony of experts submitted by the defendants and in matters relative to world conditions of which I take judicial notice, to pass upon the issue of clear and present danger. Both Judge Hand, then Chief Judge of the United States Court of Appeals (2nd Circuit), and the United States Supreme Court in *Dennis* v. *United States* and both Judge Dimock for the Southern District of New York and Judge Harlan, now Justice Harlan, for the United States Court of Appeals (2nd Circuit) in *United States* v. *Flynn, et al* took judicial notice of world conditions at the time of the indictments in those Smith Act cases. I find in reviewing those conditions as of March 4, 1955, the date of the return of the indictment in this case, that there had been no substantial change in the basic positions of the Free and Communist worlds. Russia, by far the most powerful of European nations, had been a convert to communism for more than thirty-five years; its leaders were the most devoted and potent

proponents of the faith; its avowed objective had been and continued to be to bring within its exclusive power and control all of the nations of the earth. Communist China the most powerful nation in Asia, dedicated to the same faith, was pursuing aggressive tactics in the Far East particularly in Southeast Asia.

While there had been a truce in Korea which, for the time being, reconverted the hot war to a cold war and the settlement of the war in Indo-China placed added thousands of square miles and hundreds of thousands of people under the Communist yoke, these were but phases in the on and off pressure exerted here and there in accordance with Communist strategy for world domination. Threats were being made by Communist China to take over Formosa by force; and, contrary to the terms of the Korean truce, extensive military and air force installations were being established in menacing proximity to South Korea and Japan. The United States prompted by considerations of national security had treaty commitments with the free nations of the Pacific. It had similar obligations in Western Europe and the Middle East where Russia was giving encouragement to international strife and discord. The Communist countries had made and continued to make the United States the object of all manner of calumny and abuse; the United States was continuously charged with aggressive designs against other nations; its efforts to re-establish their economic stability were repeatedly set down as a scheme to enslave them; it was singled out as the chief enemy of the faith; and though the communists asserted that the United States was eventually doomed, it was still the formidable protagonist of the decadent system which communism would

supplant. Any border fray and any diplomatic incident might provide a spark in the tinder-box and ignite a war of survival. While the Judicial is not bound by the findings of the other branches of the Government, it may be noted that, with the support of the overwhelming mass of the people of this country, the Legislative and Executive have maintained a military, naval and air establishment costing billions of dollars per annum to defend this country against communist aggression. This has not been the result of baseless public clamor—a thing which the court must resist.

The claims of the defendants as to the absence of a clear and present danger were ably presented and were very persuasive in urging that there is now no forseeable probability of an economic depression such as was experienced in the 1930's which a revolutionary group could seize upon as a suitable time to attempt to overthrow the Government by force and violence. With regard to their other claims relative to the Communist Party in the United States and the conclusion that the relationship between this country and the Communist countries had so improved that armed conflict was out of the question, I am unable to agree. The zigs and zags of Communist tactics, now warlike, now peaceful; now hostile, now friendly, are temporary means to a pragmatic end in achieving the unrenounced and undisclaimed objective of world domination through armed aggression or the threat of it. The prospect of the activities of a Communist group within the United States in aid of and in conjunction with a communist nation at war with the United States cannot be dismissed as of so little consequence that it cannot be considered a clear and present danger.

Finding on Issue of Clear and Present Danger

If, therefore, the jury, within the instructions of the court's charge, should find that the defendants or any of them are guilty of a violation of the statute, I find as a matter of law that there is sufficient danger of a substantive evil that the Congress has a right to prevent, to justify the application of the statute under the First Amendment of the Constitution of the United States.

Dated at New Haven, Connecticut, this 24th day of March, A. D. 1956.

ROBERT P. ANDERSON
United States District Judge

APPENDIX C

Excerpts from Testimony

(497)

GRACE L. COLBERG, having been previously duly sworn, testified as follows:

Voir Dire examination by the Court:

Q. You are aware, are you not, that you are still under the oath that was administered last Friday? A. Yes, I am.

Q. Would you give the reporter your name and present address? A. Grace L. Colberg, Ansonia Road, Woodbridge.

Q. Now, are you employed anywhere? A. Housewife.

Q. You are a housewife? A. Yes.

Q. Your husband living? A. My husband is living, yes.

Q. He is employed where? A. He works for the TAD Jones Company.

Q. What sort of work? A. Traffic manager.

Q. Does he have the prospect of a pension or retirement rights with the company? A. There is nothing compulsory. He doesn't have to retire at 65.

Q. But he can and get retirement pay? A. Yes.

Q. Well, is there anything about his employment, what he does, or the fact that he is employed there and the fact that he has a pension or retirement benefit, that would cause you to be prejudiced in the case for or against any of the parties? A. I think not.

Q. Now, have you or has any member of your family or any of your friends been a party to or been interested in any legal action involving the United States, its officers, agents, or employees? (498) A. No, none that I know of.

Q. Have you or has any member of your family or close friend been the subject of investigation or charged by any of the following: United States Attorney's Office, the Federal Bureau of Investigation, the Department of Justice any other officer or agency of the United States Government, the House Un-American Activities Committee, the Committee of the House of Representatives of the United States, or the United States Senate? A. None whatsoever.

Q. Have you or has any member of your family contributed funds or rendered other assistance for the defense of any person or persons charged with an offense against the laws of the United States? A. Never.

Q. Are you a member or contributor to any organization that has for its object law enforcement, except as a taxpayer, like a police auxiliary? A. No.

Q. Or police association, anything of that sort? A. No.

Q. Neither you nor your husband have any connection with that? A. No.

Q. I am going to show you the Voir Dire Exhibit A,

which is a list of names and ask you with respect to them whether you know any of them or are related by blood or marriage to (499) any of them, and if you are, I will ask you to give me the number next to the name and then I will ask you what your connection with them is. A. Nobody on this list.

Q. You don't know any of them? A. No.

Q. I will show you the Voir Dire Exhibit B which is a list of fifty-eight organizations, and ask you with respect to them whether you or any members of your family or close friend has ever been a member, officer, employee, or worker, or have you or any member of your family or close friend ever contributed financial or other support to or read the publications of, any of the organizations listed there? A. American Legion.

Q. Your husband belongs to the American Legion? A. No, my brother. I am sure one or two of them do belong.

Q. Do you have any children, by the way? A. I have two grown sons married.

Q. Were they in the armed forces? A. Both of them were in World War I.

Q. World War I? A. World War II. I beg your pardon.

Q. World War II? A. Yes.

Q. Is there anything as a result of that that they were in the armed forces that would prejudice you in this case for or against anybody? A. I doubt it very much.

(500) Q. You don't think that it would have any effect? A. I don't think so. I try to have an open mind.

Q. I didn't mean to interrupt your reading. You go ahead with the list of organizations. A. That is perfectly all right. Just the American Legion.

Q. Just the American Legion? A. Yes.

Q. Is that your brother-in-law, you said? A. No, my brother in New York.

Q. Your brother? A. Yes.

Q. Is there anything about this connection with it that would cause you to be biased one way or the other in the case? A. I think the same thing would apply. I would try very hard not to.

Q. You think you would be fair and impartial and take the evidence in the light of the Court's charge? A. Yes.

Q. I am going to ask you, is there anything about your physical condition that makes it difficult for you to sit on the jury? A. Nothing other than I am very nervous.

Q. Well, that is perhaps common with most people even though there is no real reason why you should be. A. I think I am a little more so today because I had some bad news this morning from my son, and I think probably—I hope it is just something temporary.

(501) Q. You don't think it is anything that would cause you to be— Affect your judgment or make you biased or prejudiced in the case? A. Oh, no. It is nothing pertaining to anything like that.

Q. Have you ever read or discussed any articles or books by Whittaker Chambers? A. I don't believe I have.

Q. Herbert A. Philbrick? A. No.

Q. Ever see him on the television or heard him on the radio? A. I don't remember seeing him.

Q. Have you ever read any books or discussed any books or articles by, or read any articles by Matthew Cvetic or Matt Cvetic? A. No, sir.

Q. By Harvey M. Matusow? A. No.

Q. Benjamin Gitlow? A. No.

Q. By Louis F. Budenz? A. No.

Q. By Elizabeth Bentley? A. No.

Q. By Hede Massing? A. No.

Q. By Angela Calomiris? A. No.

Q. Have you read anything in the newspapers or other periodicals or heard anything on the radio or television or received information or opinions from any source whatsoever with regard to Communism or the Communist Party or about this case which has so influenced you for or against the government, or for or against any of these defendants, that you could not act fairly and impartially without bias or prejudice as a juror in the case? A. I don't believe so.

(502) Q. Now, towards the end of the trial after the evidence is in and the attorneys have argued the judge gives instructions of law to the jury, that is the law that applies to the case. And as a part of that the Court enunciates certain principles that the jurors are to use in weighing the testimony that they have heard from the witnesses and in deciding on the credibility of the witnesses, that is, the extent to which you believe them or disbelieve them. There are certain principles that you apply.

Now, there are several questions here that have to do with your applying those principles equally to all the witnesses regardless of what the witnesses are or what their business is or where they come from, you see. And the question is whether you could apply those principles fairly and equally, whether the witness was a member of a labor union or was a Congressman, or a Communist, or member of the present or some former Communist Party, or was an employee of the Department of Justice or agent of the F. B. I., or was a friend or associate of any of the defendants.

Do you think you could apply them equally to all of them? A. I would try very hard to.

Q. It is not a matter of saying whether you believe one more than the other, but whether you could try to carry out the rules that the Court laid down and that it doesn't matter what a person is or does, that you are to apply it fairly and impartially to all of them? (503) A. Yes.

Q. And you believe you could do that? A. I think I could.

Q. Would the fact that a witness has for some time pretended to be a member of the Communist Party when he was really an F. B. I. agent give you any feeling or attitude towards the witness of that sort so that you would not be able to apply to him the same principles or standards the way you would to anybody else, any other witness? I mean just from the fact that he made that pretension, you see? A. You mean would I try to be fair in applying? A. Is that the idea?

Q. Yes, that is it. A. Yes, I would.

Q. The mere fact that he pretended to be a Communist when he was really an F. B. I. agent wouldn't affect you one way or the other as far as applying these principles? A. Oh, no.

Q. And in applying those principles would it make any difference to you whether the witness was one put on by the government or by the defendants? A. No.

Q. You would treat them with the same fairness and impartiality? A. Yes.

Q. Do you have any prejudice or bias by reason of race, color, religious beliefs, or national origin, which, in connection with (504) any defendant, witness, or anyone else who may be concerned in the case, would prevent you from keeping your mind fully open and free from

fairly and impartially reaching your verdict solely on the evidence and the rulings and instructions of the Court as to the law? A. No, I haven't.

Q. Do you or does any member of your family belong to any political organization like the democratic party or republicans or socialists, or whatever? A. Nothing.

Q. No veteran's organizations except your brother? A. Yes, my brother is a veteran.

Q. Any fraternal or beneficial organization? A. My brother, Masonic.

Q. Civil organization like the P. T. A.? A. No. I belong to the Ladies Lions Club.

Mr Stoddard: I didn't hear that.
The Court: Ladies Lions Club.

Q. Well, that might be a social club rather than civic or a combination? A. Yes, combination.

Q. Any business organization? A. Nothing.

Q. Any labor union or organization? A. No.

Q. Well, is there anything in the organization you are connected with or the fact that your brother is a Mason that would cause you any bias or prejudice for or against any of the parties in this action? A. I don't think so.

(505) Q. You don't think it would have anything to do with it? A. I don't think so.

Q. Do you belong to any organization, society, religious body, or church whose principles, teachings or programs influence your attitude for or against the government or for or against the defendants so that you could not give fair and impartial consideration to the evidence in the case in the light of the Court's rulings and instructions as to the law? A. No.

Q. Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to or support of Communism or the Communist Party of the United States? A. I am sure I haven't.

Q. Now, if you now have any belief, or if you should come to believe from the evidence that any of these defendants or the Communist Party has taught and advocated that the American people should some day change their form of society from Capitalism to socialism by lawful means and by peaceful means such as an amendment to the constitution, or persuading people to vote one way or another, would you be prejudiced or biased against these defendants on that account? A. I am not quite sure just of that question.

Q. I am not asking whether you would agree with what they said, but whether you would hold it against them because they, in a perfectly lawful and peaceful manner, urge an amendment to the constitution, of that sort, or ask people to vote that way? (506) A. No, I think not.

Q. Well, do you yourself have any present knowledge or belief as to whether the Communist Party does advocate the overthrow of the government of the United States by force and violence, or advocates altering the present system of government by lawful, peaceful means? A. No.

Q. You don't know either way? A. I don't.

Q. You haven't any belief of the subject? A. No, I really haven't.

Q. In view of the fact that these defendants are charged with being co-conspirators with eleven other persons who have already been convicted of charges similar to the charges against these defendants would you on that account alone without hearing any other evidence in the matter have an opinion that these defendants are more

likely to be guilty than not? Is that clear. A. Yes, it is clear.

Q. You see, in the indictment there were eleven persons named who are not defendants. A. I see.

Q. And the government has alleged the charge in the indictment that these people, the defendants were associated with these eleven people as co-conspirators and, of course, that has to be proven, you understand. That is part of what the government will have to prove, and at that moment you don't know whether they can prove it or not, do you? (507) A. No, I don't.

Q. You don't know whether they were associated with them or not as co-conspirators? A. Not at this time.

Q. And it was something that the government would have to prove, is that right? A. That's right.

Q. Bearing that in mind suppose you knew now that these eleven people had been convicted of a similar offense somewhere else in the United States, and just knowing that alone would it make you feel that these people are more likely to be guilty even though you don't know whether there was any connection between them or not? A. I don't think so.

Q. In other words the government would have to prove that they were associated with them? A. Until they are proven so.

Q. If it appeared that any one of these defendants is a Communist or has been a member of the Communist Party or had been one, would you for any of those reasons alone and without hearing any other evidence believe that he was guilty of the conspiracy charged in the indictment? A. Would you repeat that?

Q. If it appeared that anyone of these defendants is a Communist or had been one, or is a member of the Com-

munist Party or had been one, would you for any of those reasons alone without (508) hearing any other evidence in the case believe that he or she was guilty of the conspiracy charged in the indictment? In other words if you knew that one of them was or had been a Communist would you believe from that alone without hearing anything else that they conspired to teach and advocate the overthrow of the government of the United States by force and violence, organize a group to do that, and those were the charges in the indictment, you see? A. I think so.

Q. You don't think you would need any further evidence at all? You just said a minute ago that you didn't know about what the Communist Party did advocate? A. That's right.

Q. If you don't, what is it? A. I think I would have to wait until I heard more evidence.

Q. Well, would you still believe that it was up to the government to prove the allegations of the complaint? A. Yes, I think I would, your Honor.

Q. Well, if you knew that one or more of them was a Communist would it prevent you from giving that person the benefit of the presumption of innocence until he were proved guilty? A. I would rather wait until he was found guilty.

(509) Q. Well, it isn't so much that. It is rather, would you wait? A. I think I would. Yes, I do.

Q. You are sure you would? A. I feel so, yes.

Q. In other words, even though you might know one or more was a Communist, as they stood here as the trial opened, you don't feel there would be anything that would impair the presumption of innocence? A. At that time, you mean?

Q. At that time. A. No.

Q. In other words, you would wait until the case had been proven, as the Court would instruct you, from the evidence? A. Yes.

Q. Before you would decide they were guilty? A. Yes.

Q. Even though you knew that they had been Communists? A. Yes.

Q. Is there anything about the Korean War or your connection with anyone involved in it which would so affect your opinions and judgment that you could not give as a juror fair and impartial consideration to the case? A. No.

Q. Have you or any of your friends or relatives ever been a victim of a crime? A. Never.

Q. Or have you or any of them ever been a witness for the prosecution or defense of a criminal case? A. I don't know of anyone in the family.

(510) Q. If after hearing the evidence in this case offered by both the Government and the defendants, and the charge by the Court you arrived at the conclusion that one or more of these defendants is not guilty, would you hesitate in voting a verdict of "Not guilty" because of fear of the opinion of anybody or any group or the attitudes of any of your friends or associates, or for any other reason? A. No.

Q. Or if you at that time arrive at the conclusion that one or more of the defendants is guilty, would you hesitate in voting a verdict of guilty for any similar reason? A. No.

Q. Have you already formed any opinion or impression concerning the guilt of any of the defendants of the crime charged in the indictment which would require evidence to remove from your mind or, which as things now stand, places a duty on a defendant to prove his innocence? A. I have not.

Grace L. Colberg—Voir Dire by the Court

Q. Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants? A. No, I haven't.

Q. Did you say "brothers" or one brother? A. I have two brothers that were in World War I, and I am not sure whether both of them, but one of them is in the American Legion. Both are in the Masonic Lodge.

(511) Q. Were any of your family, brothers or anybody else, ever connected with the intelligence or security branch of the services? A. No.

Q. Are you willing to accept the law and apply the law as given to you by the Court even though it differs from what you believe the law is or what you believe the law ought to be? A. I will apply it as the law.

Q. As you get it from the Court? A. Yes.

Q. Is it clear in your mind that if you are sworn as a member of the jury in this case, that you must, in arriving at a verdict, do so without bias and without prejudice, solely on the evidence presented before you and on the law as the Court instructs you, and on nothing else? A. It is clear.

Q. Bearing in mind the question just asked, do you know of any reason whatsoever why you could not sit as a fair and impartial juror in the case? A. I think I could.

Q. In other words, you know no reason why you couldn't? A. I know no reason.

Q. Would you be influenced for or against either party if you knew one side favored having this case tried to a Court and jury and the other side preferred trial to the Court alone? (512) A. I wouldn't favor either.

Q. That wouldn't make any difference to you? A. No.

(Clerk Earl conferred with counsel.)

Instructions to Juror

The Court: Mrs. Colberg, you are *Juror No. 4*. It may take a little while to get the other jurors, so that you are excused now.

The Juror: I see.

The Court: You can go about your ordinary pursuits until you are called by Mr. Earl, the Clerk, and asked to come back again.

And I will caution you once again not to talk with anybody about the case or read anything in the papers about it or listen to the radio or television. And if anybody tries to talk to you about the case, just tell them you are not permitted to talk about it.

The Juror: Yes, sir.

The Court: And if they won't take that for an answer and they persist, I instruct you to give me their name, just as soon as possible, so that they will be taken care of.

The Juror: Yes. Am I permitted to leave this week end?

The Court: Oh, yes, yes. I doubt if you are called all this next week. I think you could certainly (513) have this week end and probably most of next week—at the earliest, the end of next week.

The Juror: Oh, I see. Thank you very much.

(Juror excused.)

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No. 843

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PETITIONER,

v.

SIMON SELVERMAN, A. K. A. SID TAYLOR, JOSEPH DIXON, ROBERT CHADWICK TEITEL, JACOB GOLDBERG, AND MARTHA STOFF, A. K. A. MRS. LOUIS ASHER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

J. LEE RANKIN,
Solicitor General,
WILLIAM F. TOMPKINS,
Assistant Attorney General,
[illegible],
[illegible],
Attorneys,
Department of Justice, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

SIMON SILVERMAN, A. K. A. SID TAYLOR, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, AND MARTHA STONE, A. K. A. MRS. EMIL ASHER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Second Circuit, reversing respondents' conviction, in the United States District Court for the District of Connecticut, of conspiracy to teach and advocate the violent overthrow of the Government of the United States, and directing the entry of judgments of acquittal as to all.

OPINIONS BELOW

The majority and dissenting opinions in the court of appeals (Appendix A, *infra*, pp. 19–71) have not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on September 11, 1957. A petition for rehearing before the court *en banc* was denied on October 25, 1957 (*infra,* p. 4, note 4). On November 23, 1957, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including December 5, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the court of appeals erred in requiring the Government to prove criminal speech within the three-year period of the statute of limitations.

2. Whether the court of appeals, in applying the "rigorous standards of review" prescribed by this Court in *Yates* v. *United States,* 354 U. S. 298, interfered with the prerogative of the jury to draw reasonable inferences from the evidence.

3. Whether the court of appeals erred in refusing to give any positive weight to evidence of underground activities.

STATUTES INVOLVED

The provisions of 18 U. S. C. 2383, 2384, 2385, and 371 are set forth in Appendix B, *infra,* pp. 72–73.

STATEMENT

Respondents, together with three co-defendants no longer involved in these proceedings, were charged in a single-count indictment, returned in the District of Connecticut on March 4, 1955, with having conspired,

in violation of 18 U. S. C. 371 and 2385 (*infra*, pp. 72–73), to teach and advocate the duty and necessity of overthrowing the Government of the United States by force and violence as speedily as circumstances would permit.[1] Following a trial by jury, respondents were found guilty and each was sentenced to four years' imprisonment, except Dimow, who was sentenced to three years.[2]

While respondents' appeals to the Court of Appeals for the Second Circuit were pending, and following oral argument thereof on January 8, 1957, this Court, on June 17, 1957, announced its decision in *Yates* v. *United States*, 354 U. S. 298. The court of appeals thereafter requested the filing of additional briefs by the parties discussing the impact of the *Yates* decision on the pending appeals, the order inviting the Government to cite from the record examples of oral advocacy of the use of force to overthrow the Government of the United States. On September 11, 1957, following the submission of additional briefs as

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[1] The indictment also charged as an object of the conspiracy the organizing of the Communist Party of the United States as a society of persons to teach and advocate the violent overthrow of the Government, but this portion of the indictment was withdrawn from the jury's consideration by the trial judge as barred by the statute of limitations. Cf. *Yates* v. *United States*, 354 U. S. 298, 303–312, holding in comparable circumstances that such withdrawal was required and that the failure to do so in the *Yates* case was reversible error.

[2] One of the three co-defendants was also convicted, received a suspended sentence, and did not appeal. Of the remaining two, the jury acquitted one and was unable to agree upon a verdict as to the other.

requested, the court of appeals, by a vote of 2 to 1,[3] reversed the convictions of all respondents and directed the entry of a judgment of acquittal as to each, on the grounds that (1) the evidence was insufficient to establish the first element of the crime charged, the conspiratorial agreement; (2) the language of advocacy of violence upon which the Government relied fell short of language of advocacy of or incitement to action as required by the *Yates* decision; and (3) no "criminal speech" was in any event shown to have occurred within the period of the statute of limitations—which fact constituted in itself, in the view of the majority, a fatal deficiency in the proof.

On September 25, 1957, the Government filed a petition for rehearing before the court of appeals *en banc*. This petition was denied on October 25, 1957. The *per curiam* order of denial states that the full court was evenly divided, 2 to 2, as to whether the petition should have been granted, with two judges not voting by reason of their having disqualified themselves.[4]

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[3] Chief Judge Clark wrote the majority opinion, in which Judge Waterman concurred (*infra*, pp. 19–51); Judge Hincks wrote a dissenting opinion (*infra*, pp. 51–71).

[4] The order recites: "The petition for *en banc* procedure, having been submitted at Judge Hincks' request to all the circuit judges of the circuit who are in active service, was favored only by Judges Medina and Hincks, Chief Judge Clark and Judge Waterman being opposed, and Judges Lumbard and Moore disqualifying themselves and not voting. Since a hearing *en banc* has not been ordered by a majority of said judges, the petition is denied by the division of the court which heard the original appeal, 28 U. S. C. A. 46(c), Judge Hincks dissenting."

We believe it unnecessary, for present purposes, to summarize the voluminous evidence which, in our view, fully supports the jury's verdict under the standards laid down by the *Yates* decision. Representative samples of the evidence, referred to in the majority opinion below, are examined and analysed at some length in Appendix C, *infra*, pp. 74–87. See, also, the discussion of the evidence by Judge Hincks in his dissenting opinion (*infra*, pp. 51–70).

REASONS FOR GRANTING THE WRIT

1. The decision of the court of appeals rests heavily upon its holding that the Government must prove criminal speech (incitement to violence against the Government) by the defendants or their co-conspirators during the period of the statute of limitations. Thus, the court stated (p. 28, *infra*):

> Since the statute of limitations bars prosecution for events prior to March 4, 1952, there must ultimately be proof of criminal speech after that date. To summarize, there must be proof of three things: (1) utterances after March 4, 1952; (2) that the utterances were illegal under the standard of the *Yates* case; (3) that they were uttered pursuant to an understanding between the appellants and some of the persons convicted in the *Dennis* case.

Finding no direct evidence of such criminal speech (pp. 30–31, *infra*), the court considered, throughout most of its opinion, whether there were circumstances from which it could be inferred that there was such advocacy during the three-year period (pp. 31–50, *infra*). Since the court found the circumstantial evi-

dence likewise insufficient for this purpose, it held that "none of the appellants could have been a member of such a conspiracy" and reversed the convictions (p. 50, *infra*).

The court of appeals, in requiring proof of criminal speech during the period of the statute of limitations, cited no authority. See pp. 28, 31, 49, *infra*. This failure is not the result of oversight, for no such authority exists. It is, indeed, well settled that Congress has the power to separate conspiracy from the substantive offense, *Clune* v. *United States*, 159 U. S. 590, 595, and that, when Congress has created such a crime of conspiracy, no proof of the substantive offense is necessary. *E. g.*, *Williamson* v. *United States*, 207 U. S. 425, 447–449; *United States* v. *Rabinowich*, 238 U. S. 78, 85–86; *Heskett* v. *United States*, 58 F. 2d 897 (C. A. 9), certiorari denied, 287 U. S. 643. Since proof of the substantive crime is unnecessary, it obviously need not be proved to have occurred during the period of the statute of limitations. As a result, no cases have been found in which a court has even discussed whether the substantive offense must have occurred during this period. Instead, the courts have merely required that, when an overt act is needed to complete the offense, the statute of limitations run from the last overt act averred and proved. *Hyde* v. *United States*, 225 U. S. 347, 368–371; *Fiswick* v. *United States*, 329 U. S. 211, 216–217.

There is no indication, either in statutory or decisional law, that ordinary rules of conspiracy should not apply to conspiracies to violate the Smith Act.

The defendants here were tried under the general conspiracy statute, 18 U. S. C. 371, since the conspiracy clause had been removed from the Smith Act in 1948. 62 Stat. 808.[5] In *Dennis* v. *United States,* 341 U. S. 494, this Court upheld convictions based partly on ordinary rules of conspiracy. See *United States* v. *Dennis,* 183 F. 2d 201, 230 (C. A. 2). In *Yates* v. *United States,* 354 U. S. 298, 334, the Court, refusing to require that the overt act be the substantive crime, applied general conspiracy law and cited general conspiracy cases. In *United States* v. *Flynn,* 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909, in an opinion by Mr. Justice (then Circuit Judge) Harlan, the court stated (*id.* at 360):

> In the case of so serious a crime as treason Justice Jackson in *Cramer* v. *United States,* 1945, 325 U. S. 1, * * * took occasion to repudiate the notion that ordinary rules can be made to vary dependent on the gravity of the offense. In the same type of case our concepts do not recognize one kind of law for one case and another kind for another. Indeed, in *Dennis* we applied ordinary conspiracy rules to a Smith Act conspiracy. [Footnote omitted.]

In *Yates* v. *United States,* 354 U. S. 298, 330–333, this Court, in considering whether the evidence adduced by the Government was sufficient to justify subjecting the defendants to retrial, searched for examples of advocacy of forcible action connected with each of the individual defendants. But this search

[5] A new conspiracy clause was added to the Smith Act in 1956. 70 Stat. 623.

cannot be deemed to have established the principle that conspiracy under the Smith Act requires proof of the substantive crime of advocacy. Certainly, if this Court had intended to establish such a novel principle in the law of conspiracy, it would have overruled, distinguished, or at least considered its own earlier decisions and the established law of conspiracy. This Court did not consider earlier precedents because, it is submitted, instead of adopting a novel principle of law, it was in fact merely weighing the evidence to ascertain "whether there are individuals as to whom acquittal is unequivocally demanded." *Id.*, at 328. In a conspiracy to commit a crime of action, such as a conspiracy to commit murder, the conspiracy can be proved without in any way proving the substantive crime, *e. g.*, by introducing communications between members of the conspiracy. In order to prove a conspiracy to advocate forcible action, however, instances of actual advocacy of such action are almost the only evidence available, and such advocacy constitutes, in fact, the substantive crime. But while it may be necessary because of the nature of a conspiracy of illegal advocacy to prove such advocacy in order to prove the conspiracy itself, it by no means follows that this proof must show advocacy during the period of the statute of limitations. All that is required is that the illegal conspiracy continue into the period of the statute of limitations, as evidenced by an overt act during that time. *Yates* v. *United States, supra,* 354 U. S. 298, 334; *Hyde* v. *United States, supra,* 225 U. S. 347; *Fiswick* v. *United States, supra,* 329 U. S. 211.

Even if this Court intended in *Yates* to require proof of the substantive crime (and we think that its opinion establishes the contrary), there is no indication that it intended that this crime must be shown to have occurred during the period of the statute of limitations. On the contrary, the Court, in weighing the evidence against each of the defendants, expressly considered evidence of events in 1946—considerably more than three years before December 21, 1951, the date of the *Yates* indictment. 354 U. S. at 331, 332. In fact, as to seven of the defendants whom this Court ordered retried, the only evidence of illegal advocacy which this Court considered concerned these events in 1946.* Furthermore, this Court explicitly rejected a contention, pressed on it by the *Yates* petitioners, that the overt act in furtherance of the conspiracy (proof of which within the limitations period was required) had to be the very substantive offense (advocacy of violence) which the Smith Act prohibits. Instead, as we have noted, the Court, in conformity with general principles of conspiracy law, held that the overt act need not be criminal at all. 354 U. S. at 333–334. In

* The 1946 evidence related to seven of the nine defendants whom the Court ordered retried. 354 U. S. 331, 332. The Court apparently regarded the testimony of Scarletto, most of which concerned events during the three-year period prior to the indictment, as related only to Carlson and Dobbs, the other two of the nine defendants. *Id.* at 331–332, 333. In fact, however, Scarletto also gave testimony (relating to the limitations period) which concerned two of the other seven defendants ordered retried. Appendix to the Government's brief in the court of appeals in *Yates* v. *United States*, 354 U. S. 298 (on file with this Court), pp. 92–99.

short, it is impossible to reconcile with *Yates* the holding below requiring proof of criminal speech within the limitations period.

2. The court of appeals' majority also held that there was not sufficiently strong evidence (either for the period before or that after 1952) of illegal advocacy. We have no quarrel with the court's declaration, in the words of *Yates* v. *United States*, 354 U. S. 298, 328, that it was obliged to apply "rigorous standards of review."[7] Our objection is that the court has seriously invaded the province of the jury and interfered with its prerogative of drawing reasonable inferences from the evidence.

The claim that the appellate court overstepped the permissible bounds is borne out, we believe, by a reading of the majority opinion. We have also set forth at some length in Appendix C, *infra*, pp. 74–87, an analysis of six items of evidence upon which the court of appeals commented in its opinion. Each of these involves a statement (or statements) made by one of the defendants or co-conspirators in this case. We undertake to show that the court's comments on

[7] Unlike *Yates*, there is no problem in the instant case with respect to the trial court's instructions to the jury on "organizing" or on the requirement of language of incitement. The "organizing" portion of the indictment was withdrawn from the jury's consideration by the trial court (Tr. 8928–8929). The charge of the trial court as to language of incitement was substantially identical with the instructions in *Dennis*, approved by this Court in both *Dennis*, *supra*, 341 U. S. at 511–515, and *Yates*, *supra*, 354 U. S. at 320–322. In fact, as Judge Hincks pointed out in his dissent, "Not even the appellants criticize the judge's charge * * *" (p. 59, *infra*).

the probative force of these statements exclude damaging inferences which the jury might, quite properly, have drawn. We also point out that the court failed to take into account related evidence to which the jury might properly have given weight in evaluating the statements in question. Cf. *Cramer* v. *United States*, 325 U. S. 1, 32–33.

The correct standard of review, we take it, is not doubtful. It is axiomatic that an appellate court does not weigh evidence or determine credibility of witnesses, but merely decides whether there was substantial evidence to support the verdict. *Stilson* v. *United States*, 250 U. S. 583; *Glasser* v. *United States*, 315 U. S. 60, 80. In determining whether there was substantial evidence to support the verdict, the evidence and the inferences and deductions reasonably to be drawn therefrom must be viewed in the light most favorable to the Government. *United States* v. *Manton*, 107 F. 2d 834 (C. A. 2), certiorari denied, 309 U. S. 664. The question presented to the appellate court is not whether the evidence satisfies it as proving the defendant's guilt beyond a reasonable doubt, but, rather, whether the verdict is supported by any competent substantial evidence, direct or circumstantial, which might reasonably lead jurors to a verdict of guilt. *Abrams* v. *United States*, 250 U. S. 616, 619; *United States* v. *Kushner*, 135 F. 2d 668, 673 (C. A. 2), certiorari denied, 320 U. S. 212; *United States* v. *Randall*, 164 F. 2d 284, 286–7 (C. A. 7), certiorari denied, 333 U. S. 856. To affirm a conviction for crime, the appellate judges need not them-

selves be satisfied of the defendant's guilt beyond a reasonable doubt, *Matthews* v. *United States,* 192 Fed. 490, 495 (C. A. 8), because it is for the jury to determine whether or not there is reasonable doubt as to the guilt of a defendant by deciding what inferences should be drawn from the evidence. *Pierce* v. *United States,* 252 U. S. 239, 251, 252; *United States* v. *Valenti,* 134 F. 2d 362 (C. A. 2), certiorari denied, 319 U. S. 761.

The court of appeals, we submit, has not followed or applied this standard in the instant proceeding. The majority's conclusion [illegible] a conspiracy to *advocate* revolutionary action was not sufficiently established is a particularly remarkable one, we believe, when it is measured against the concession that the record does "afford proof of seditious conspiracy or conspiracy to commit insurrection or revolution" (*infra,* p. 49). It is extremely unlikely that two or more persons would have participated over a substantial length of time in a conspiracy violating 18 U. S. C. 2384 (*infra,* p. 72) or 18 U. S. C. 2383, 371, (*infra,* pp. 72, 73), without making statements of advocacy violative of the Smith Act, 18 U. S. C. 2385, 371. But even if such a conspiracy to commit seditious action might possibly be unaccompanied by illegal advocacy, it is inconceivable that a jury should not be allowed to infer such advocacy from the wealth of evidence introduced in this case. Judge Hincks stated in his dissent that "the evidence of continuing advocacy as to the necessity for violent overthrow, of advocacy of union infiltration, and of advocacy of Party operation by an elaborate underground appa-

ratus casts a brilliant light on their [respondents'] agreement as to 1952–1955 tactics", and that there is "an abundance of evidence to show that within that period the [respondents] and their co-conspirators agreed to advocate the violent overthrow of our government and to advocate a present program of action directed to that end" (*infra,* p. 70). The jury was free to draw its own reasonable inferences from that evidence.

The court, judging from its comments on the various items of the Government's evidence examined in the opinion (see *infra,* pp. 74–87), appears to have adopted the view that nothing short of a formal, explicit appeal to engage in future violent action looking to governmental overthrow will satisfy the evidentiary requirements laid down by this Court in *Yates.* We submit that this view seriously misconstrues those requirements. Certainly, a "call to action"—advocacy that one's hearers personally participate in future violent action "when the time is ripe"—can be *implicit* in what one says, that is to say, inferable from the total circumstances in which the words are uttered.* The majority judges, by

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* For example, the statements of respondent Goldring to witness Gay, discussed *infra,* pp. 75–77, while perhaps on their face no more than Goldring's "personal prognostication as to the way communism would be achieved" (as the majority below described them, see *infra,* p. 33), constituted *in their context* an implicit call to future forcible action on Gay's part; at least the jury had a right so to infer.

Similarly, the speech which coconspirator Onda delivered in 1945, discussed *infra,* pp. 77–81, may have amounted, viewed *in vacuo,* to no more than "an argument about the proper orthodox dogma" (as the court characterized it, see *infra,* p.

limiting their search of the evidence to instances of verbally explicit advocacy of violence, have overridden the traditional jury function of drawing inferences from evidence viewed in its total context.

3. In *Yates* v. *United States, supra,* 354 U. S. at 332, this Court, considering evidence of underground activity much weaker than that in the instant case, stated that "It might be found, under all the circumstances, that the purpose of this teaching [of underground methods] was to prepare the members of the underground apparatus to engage in, to facilitate, and to cooperate with violent action directed against

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34); viewed in context, however, it was a call to future forcible action on the part of Onda's audience.

Likewise, we believe that the jury was entitled to consider respondent Stone's statement, "Frankly, Amie, if necessary we'll have bloodshed," discussed *infra*, pp. 85–87, as, in its context, an appeal to "Amie" personally to participate in the future overthrow of the Government, using force and violence to the extent necessary to achieve such overthrow. The court's expressed view (see *infra*, p. 32) that the "if necessary" saved the appeal from the interdiction of the Smith Act cannot, we believe, be sustained. No Communist, obviously, advocates violence for its own sake, but solely as a means to power. If the lawfully constituted governmental authorities would accede to the insurgents' demands without resistance, the latter would, of course, be happy to achieve their objective in such a bloodless fashion. Being realistic enough to know, however, that "the capitalists" will "never give up without a fight," they know that violence will be necessary to achieve their objective of seizing political power. They are nevertheless determined to achieve this objective, when "the time is ripe," with or without violence. There is no meaningful difference, we submit, between advocating the violent overthrow of the Government and advocating the seizure of political power by any available means, including force if necessary. Cf. Section 2 (6) of the Internal Security Act of 1950, 50 U. S. C. 781 (6).

government when the time was ripe." This recognition that evidence of underground activity is relevant to conspiracy under the Smith Act is to be contrasted with the court of appeals' refusal, in the instant case, to give any positive weight to strong evidence of underground activity in considering whether the jury had sufficient ground for finding the conspiracy charged. The evidence of underground activity was equated to concealment, which was dismissed with the statement that (p. 48, fn. 5, *infra*):

> Once the existence of the crime were shown by other evidence, these facts might be relevant as corroboration or as to specific intent.

In equating underground activities with mere concealment, the court of appeals misconceived the force of the evidence of such activities. While concealment, of itself, is of some significance, evidence of a tightly organized, clandestine organization under the direct supervision and control of respondents and their co-conspirators was of far greater importance.

In the summer of 1948, coinciding with the indictment of the *Dennis* defendants, co-conspirator Thompson began to develop an underground within the New York State Communist Party (Tr. 3314–3318).[9] Thompson stated that the purpose of the underground preparations was to enable the Party to function under any and all conditions and to ensure continuity of leadership (Tr. 3314–3315). In August 1950, prior to going into the underground, co-defendant Resnick

[9] Only a part of the considerable evidence of underground activity is described here.

solicited funds, on request from New York, for the purpose of securing offices and secret hiding places for top leadership in the event that the Party was outlawed (Tr. 5699–5700). He also instituted security measures and gave instructions with respect to non-compliance of Communist Party members in the event the Mundt-Nixon Bill became law (Tr. 5701–5702). The first qualification for underground membership was loyalty to the Party under any and all circumstances (Tr. 3314–3315). The leaders of the Party in Connecticut were instructed by the National Office of the Party to alter their appearances, change their names and residences as often as possible, and to remain in hiding for two or three years or until further notice (Tr. 6505–6507, 6518). Contact with the Connecticut Party was through couriers chosen because of fanatical and militant belief in the Communist Party (Tr. 6509). From time to time, individual conspirators were ordered back into Connecticut on Party assignments (Tr. 6510). The Connecticut leaders were in touch with one another while in the underground (Tr. 6512). While in the underground, respondent Taylor (Silverman) instructed witness Paumi as to the vanguard role of the Party, and predicted that the Communists would take over the government in five or six years (Tr. 6514–6515).

Unlike *Yates*, the evidence here shows that each respondent (except Stone) was a state-wide leader of the Party who participated personally in the underground, even to the extent of leaving his home and

community, changing his appearance and identity, and remaining in such status for an extended period of time (*e. g.*, Tr. 6507). Stone was a national leader who operated surreptitiously in supervising underground activity in Connecticut for the National Committee of the Communist Party (Tr. 5267, 5287). Respondents are thus not a few frightened individuals who fled and went into seclusion for a few weeks in fear of social or economic sanctions or even arrest. They went underground pursuant to orders from the National Office (Tr. 6507). They remained underground, away from their homes and families, until they were ordered to resume normal activities (Tr. 6519). These are not the machinations of a political party. They are the tactics of professional revolutionaries. Having studied, taught and defended Marxism-Leninism for years, respondents considered it as their guide to action (Gov. Ex. 38, p. 8).

It should be emphasized that these underground operations and activities took place during the Korean War, which at times threatened to spread into a world-wide conflagration, thus providing the "objective conditions" which, in Marxist-Leninist theory, are to be used as a basis for forcible overthrow of all capitalistic governments. The perfection of the Party organization, particularly the extensive and elaborate underground operations, would constitute the requisite "subjective conditions." Thus, it is submitted, if the court of appeals had heeded the discussion of this Court in *Yates* and considered evidence of underground activity as relevant to conspiracy under the

Smith Act, it would not have overridden the jury finding that such a conspiracy existed.

CONCLUSION

The court of appeals misconceived the law of conspiracy and erroneously held that the Government was required to prove that criminal advocacy took place within the three-year period of the statute of limitations. Moreover, in appraising the evidence, the court substituted its own inferences for inferences reasonably drawn by the jury, thus invading the latter's fundamental prerogatives. Finally, the court erred in its failure to recognize the relevance and probative force of the Government's proof of underground activities. For all of these reasons, the decision below raises serious legal problems vitally affecting the future enforcement of the Smith Act. Accordingly, this petition for a writ of certiorari should be granted.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
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JOHN C. KEENEY,
BRUCE J. TERRIS,
Attorneys.

DECEMBER 1957.

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 195—October Term, 1956.

(Argued January 8, 1957 Decided September 11, 1957.)

Docket No. 24126

UNITED STATES OF AMERICA,

Appellee,

v.

SIMON SILVERMAN, a. k. a. Sid Taylor, JOSEPH DIMOW, ROBERT CHAMPION EKINS, JACOB GOLDRING, and MARTHA STONE, a. k. a. Mrs. Emil Asher,

Defendants-Appellants.

Before:

CLARK, *Chief Judge,* and

HINCKS and WATERMAN, *Circuit Judges.*[1]

Appeal from the United States District Court for the District of Connecticut, Robert P. Anderson, *J.*

[1] The appeal was originally argued before a panel consisting of Judges Clark, Lumbard, and Waterman; upon Judge Lumbard's disqualifying himself, Judge Frank was substituted; upon Judge Frank's death, Judge Hincks was added.

Simon Silverman, also known as Sid Taylor, Joseph Dimow, Robert Champion Ekins, Jacob Goldring, and Martha Stone, also known as Mrs. Emil Asher, appeal from their conviction of conspiracy to violate the Smith Act, 18 U. S. C. §§ 2385, 371. Reversed for dismissal of the indictments.

FRANK J. DONNER, New York City, THOMAS I. EMERSON, New Haven, Conn., and GEORGE F. LOWMAN, Stamford, Conn. (Joseph Mitchell Kaye, Stamford, Conn., on the brief), *for defendants-appellants.*

SIMON S. COHEN, U. S. Atty., Dist. of Conn., Hartford, Conn., and William F. O'Donnell, III, Atty., Dept. of Justice, Washington, D. C. (Francis J. McNamara, Jr., Asst. U. S. Atty., New Haven, Conn., and Harold D. Koffsky and John C. Keeney, Attys., Dept. of Justice, Washington, D. C., on the brief), *for appellee.*

CLARK, *Chief Judge:*

The five defendants herein appeal from a judgment of conviction after verdict of a jury on charges of having conspired to violate the Smith Act, 18 U. S. C. §§ 2385, 371, by "unlawfully, wilfully and knowingly advocating and teaching the duty and necessity of overthrowing and destroying the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit."[2] Three other defendants were also

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[2] Since its original enactment in 1940 the Smith Act has undergone some amendment, not affecting our discussion herein, but concerning in part its connection with the general conspiracy statute, 18 U. S. C. § 371. These changes are set forth in *Yates* v. *United States*, 77 S. Ct. 1064, 1067, n. 1. The final words quoted in the text from the indictment, "as speedily as circumstances would permit," are not found in the statute. An

indicted; of these the jury acquitted one and disagreed as to another, while the third, who was convicted, has not appealed his suspended sentence.

Among other allegations of error appellants claim that they were unconstitutionally compelled to stand trial to a jury despite their strenuous efforts to waive that form of trial; they were prejudged by the congressional findings in the Communist Control Act, 50 U. S. C. § 841; and their speech did not constitute a "clear and present danger," as defined in Supreme Court precedents. We do not decide these far-reaching issues, however, because we hold the evidence insufficient to establish the first element of the crime charged: the conspiratorial agreement. In this opinion we shall examine, first, the precise nature and content of the agreement charged and, second, the evidence adduced to establish it. Finally, we shall consider the nature of our direction to the trial court in the light of our conclusion as to the evidence.

Even though we are constrained to find error, it seems desirable to say that the trial judge conducted the lengthy proceedings with outstanding dignity and the utmost fairness, in the tradition of the best American jurisprudence. And his rulings certainly had a rational basis in what then seemed to be the Supreme Court's approach and also afforded the most direct, if not the only, method of facilitating a definitive determination of the legal principles involved. That the questions presented difficulty from the beginning is clear. For the case dealt with what have been termed with some reason "third-string" Communist party officials, who, with the single exception of Stone,

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earlier indictment had been dismissed for irregularities in the selection of the Grand Jury. *United States* v. *Silverman*, D. C. Conn., 129 F. Supp. 496.

were merely local Connecticut functionaries, and with a conspiracy limited by the statute of limitations to the period March 1952 to March 1955, but alleged to be part of the continuing national conspiracy found in other cases to have been formed in 1945. The chains of connection with the heart of the often recognized Communist conspiracy are thus much longer and decidedly more tenuous than in the other cases we have had. The problem thus presented has been clarified since the conclusion of the trial by the very recent decisions of the Supreme Court, notably *Yates* v. *United States*, 77 S. Ct. 1064, 1073–1085, requiring for a conviction proof of an "advocacy of action," rather than "advocacy or teaching of abstract doctrines, with evil intent." We do not find here evidence of the necessary incitement to action.

Our discussion will follow the following outline:

I. The Agreement Charged

A. The Persons Involved.
B. The Aim of the Conspiracy.

II. The Proof

A. Evidence Covering the Years 1952–1955.
B. Oral Advocacy before 1952.
C. Written Advocacy before 1952.
D. The 1945 Agreement.
E. The Revolutionary Aims of the Communist Party.

III. The Disposition of the Case on Remand

I. The Agreement Charged

A. The Persons Involved. The indictment charged a single conspiracy embracing the eight defendants,

divers persons whose names were unknown to the Grand Jury, and some identified coconspirators: Andrew Onda, Betty Gannett, Joseph Roberts, William Z. Foster, Benjamin David, Eugene Dennis, John Gates, Gilbert Green, Gus Hall, Irving Potash, Jacob Stachel, Robert Thompson, John Williamson, Henry Winston, and Carl Winter. The role of these various defendants and named coconspirators can be appreciated only against the background of the Party hierarchy. Actually two hierarchies were involved, one state and one national, with the former responsible to the latter. By and large the defendants were involved in the state hierarchy, and the named coconspirators were involved in the national structure. Both state and national groups were overhauled in 1945 when they changed their name from political associations to parts of the Communist party; this event is the commencement of the conspiracy charged in the indictment.

The highest body in the reconstituted national party was the National Convention, but it met only briefly at scattered intervals. Between conventions the leadership groups, in descending order of importance, were the National Secretariat, the National Board, and the National Committee. Attached to them were various special organizations and boards. The only defendant who ever held a national post was the appellant Stone, who was a member of the New Jersey Delegation to the National Convention of 1948, an alternate member of the National Committee in 1951, and a member of the National Committee in 1953. Most of the named coconspirators held high national offices. Foster, Dennis, Davis, Gates, Green, Hall, Potash, Stachel, Thompson, Williamson, Winston, and Winter, according to testimony, were members of the National Board elected at the critical 1945 Conven-

tion. They were all indicted for violating the Smith Act and were convicted, with the exception of Foster, who was too ill to stand trial, in the original *Dennis* case in 1949, which was affirmed, *United States* v. *Dennis,* 2 Cir., 183 F. 2d 201, and thereafter by the Supreme Court, 341 U. S. 494. These *Dennis* case leaders and coconspirator Elizabeth Gurley Flynn were elected to the National Committee at the same convention. Flynn's conviction in 1952 for violating the Smith Act by conspiring with the *Dennis* case conspirators was affirmed in *United States* v. *Flynn,* 2 Cir., 216 F. 2d 354, certiorari denied *Flynn* v. *United States,* 348 U. S. 909.

Coconspirator Onda was a delegate to the 1945 National Convention, where he represented the Communist Political Association in Connecticut. Coconspirator Gannett was the Assistant Organizational Secretary to the national organizational director of the Party from 1945 until at least 1950. Coconspirator Roberts was business manager of the publication *The Daily Worker* in 1947.

The Communist Party of the State of Connecticut was organized in the same fashion, with a secretariat, board, committee, and convention. The only named coconspirators active in it were Onda and Roberts. The former was the top leader of the State Party in 1945 and the latter was a District Organizer in Connecticut. Appellant Taylor (Silverman) was State Secretary from 1945 to 1950, when he became State Chairman—a post he held at the time the indictment was returned. Appellant Ekins became State Secretary in 1950 and held that post until 1954. Appellant Goldring was a member of the State Committee at various times from 1946 through 1954, was State Financial Secretary, Treasurer, and Press Director in 1949, and was State Executive Secretary in 1954.

Taylor, Ekins, and Goldring were members of the State "concealed Board." Appellant Dimow held local offices in Connecticut from 1946 to 1949 and was a member of the State Committee in 1953 and 1954.

The interconnection of the state and national officers is an important question of proof, and we shall discuss it below in that context. But the evidence of connection must be noted here, too, in defining the issue presented by the charges. As the evidence developed, the national leaders were shown to have supervised operations within the state apparatus; and various persons in the conspiracy on the national level were shown to have met other persons involved in Connecticut affairs. Thus appellant Stone, although on the national level, met appellant Taylor, a state level leader, at several meetings in Connecticut in 1952 and 1953. Stone directed the concealed activities of the Connecticut Party at a time when appellants Taylor, Ekins, and Goldring were members of a concealed State Board. Coconspirator Gannett, in the national hierarchy, appeared at a state party meeting sponsored by appellant Taylor; and a former Connecticut State Chairman served at one time as Gannett's assistant. To take one out of innumerable instances in the record of liaison between state and national organizations, Nat Ross from the National Office of the Party spoke once at a State Seminar in praise of the work of Joseph Stalin. The record contains scores of names of persons who held office or taught classes for the Party between 1930 and 1955 in various parts of the United States; and the jury was invited to believe that they, too, were part of the same single national conspiracy in which the defendants engaged between 1952 and 1955.

The Government's contention was that the defendants were "after-joiners" who either joined the Party

after it was reconstituted or remained in it after learning the significance of its reorganizations.[3] None of the defendants participated in the 1945 reorganization of the national party, although most of the identified coconspirators were at that convention. The only defendant to participate in the Connecticut reorganization was appellant Goldring, who attended the 1945 State Convention which approved the decision of the national group and emulated it. Appellant Dimow joined the Party in 1946; the other appellants had been members of the Party long before the 1945 reorganization: Stone since 1933; Ekins since 1937; Taylor since 1939; and Goldring since 1941.

Normally a conspiracy indictment need not fail if proof is lacking to implicate some of the defendants or coconspirators charged. See, e. g. *United States* v. *Ciotti*, 2 Cir., 242 F. 2d 473, 475, certiorari denied *Ciotti* v. *United States*, 77 S. Ct. 1060. Under the circumstances here, however, a reversal would be necessary if the prosecution failed to prove its charge that the appellants were in league with the top echelon Communist party leaders convicted in the *Dennis* case. By linking the defendants with such notorious persons serious harm was done to their chances of acquittal. Whole volumes of highly inflammatory testimony about persons whom the defendants had never met were admitted into evidence on the Government's representation that these other persons would be shown to be coconspirators. Thus

[3] The indictment alleged a conspiracy to organize, as well as to teach and advocate; and evidence of organizational activity was admitted. But the organizing count did not go to the jury, having been dismissed as barred by the statute of limitations. The evidence of organizing was not stricken, it being relevant to the conspiracy to teach and advocate.

the statements, deeds, and aims of the top echelon national leaders were paraded before the jury; and Government witness John Lautner's career in other parts of the country between 1929 and 1950 was traced in detail—all on the assumption that these facts were relevant to a huge national conspiracy in which the *Dennis* case leaders were the hub, and the Connecticut state hierarchy one of many identical spokes. These lines of testimony were neither brief nor merely cumulative nor easily forgotten. Hence the conviction cannot stand without a showing that the defendants and at least some of the persons involved in the *Dennis* case were part of the same conspiracy. *Yates* v. *United States*, *supra*, 77 S. Ct. 1064; *Kotteakos* v. *United States*, 328 U. S. 750.

B. The Aim of the Conspiracy. We seek to define the precise aim of the conspiracy charged by the Grand Jury, mindful of the Supreme Court's recent warning that it "will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions" by loose definition of conspirators' goals. *Grunewald* v. *United States*, 77 S. Ct. 963, 974. The indictment alleges an agreement to utter the kind of dangerous speech prohibited by the Smith Act. We mention this obvious fact because of the ease with which this crime may be accidentally confused with the superficially similar offense of conspiring to overthrow the Government by force and violence. The latter is forbidden by 18 U. S. C. §§ 2383 and 2384; the present indictment concerns the Smith Act, 18 U. S. C. § 2385. In this case it would not be enough to show that the defendants were serious revolutionaries who plotted to take part in a bloody insurrection; there must be a further showing of illegal speech. It is the speech element which dis-

tinguishes the Smith Act from other criminal controls on subversive activities and which has caused the Supreme Court to narrow the statutory language to avoid a construction which would violate the First Amendment. Turning then to the Smith Act, as most recently construed by the Supreme Court, it appears that there must be proof of a plan to use language reasonably calculated to incite the audience to use violence against the Government of the United States, either immediately or in the future. *Yates* v. *United States, supra,* 77 S. Ct. 1064.

This case, like *Dennis* and *Yates,* "involve[s] advocacy which ha[s] already taken place, and not advocacy still to occur." 77 S. Ct. 1064, 1079. The Government makes no claim of "a conspiracy to engage in advocacy in the future." 77 S. Ct. at page 1080. Its position is that the conspirators actually advocated insurrection in language of the sort condemned by *Yates* from 1945 until the indictment in 1955. Since the statute of limitations bars prosecution for events prior to March 4, 1952, there must ultimately be proof of criminal speech after that date. To summarize, there must be proof of three things: (1) utterances after March 4, 1952; (2) that the utterances were illegal under the standard of the *Yates* case; (3) that they were uttered pursuant to an understanding between the appellants and some of the persons convicted in the *Dennis* case.

II. The Proof

Before discussing particular items of evidence we shall explain the manner in which we think *Yates* v. *United States, supra,* 77 S. Ct. 1064, bears on this issue. After that decision was announced we requested counsel to submit further briefs to indicate the effect of the decision on the present appeal. In

complying, counsel have quoted to us extracts from the *Yates* record and the Government's brief in *Yates* and they suggest a point-by-point comparison of the facts in *Yates* with the present facts. For at least two reasons we are constrained to reject this approach. First, the standard of sufficiency of the evidence applied by the Supreme Court to determine whether convictions reversed for an erroneous jury charge should lead to retrial or acquittal is not the same as the criterion we are required to apply here: "In judging the record by these criteria we do not apply to these cases the rigorous standards of review which, for example, the Court of Appeals would be required to apply in reviewing the evidence if any of these petitioners are convicted upon a retrial. Compare *Dennis* v. *United States, supra,* 341 U. S. at page 516, 71 S. Ct. at page 870. Rather, we have scrutinized the record to see whether there are individuals as to whom acquittal is unequivocally demanded." *Yates* v. *United States, supra,* 77 S. Ct. 1064, 1081, 1082. Our present task is to apply the "rigorous standards of review" mentioned in *Yates* with "the scrupulous care" required by *Dennis.* The issue of retrial or dismissal is a matter for separate consideration hereafter.

Second, in determining whether or not the present record supports the immediate charge, we see no advantage to be gained by proceeding indirectly and considering whether this record is "weaker" or "stronger" than that in *Yates.* Such efforts to carry *stare decisis* into the realm of unique patterns of fact are difficult in the briefest cases and impossible here where the record below ran over 9,200 pages and the *Yates* record was half again as large. Each case is sufficiently distinct, so that such analyses are misleading and unhelpful. We shall proceed directly, examining the

present evidence and comparing it with the charge which we have previously analyzed.

A. Evidence Concerning the Years 1952–1955. We resolve all issues of credibility in favor of the prosecution and draw all inferences in its favor. Even so, the single, most remarkable fact in the record is that there is no example of revolutionary advocacy of either the legal or illegal sort during the period covered by the indictment. This conspicuous failure of proof has added significance because in this period at least three Government informers who testified at the trial were in the Party in Connecticut. One of them was on the concealed State Board. They reported at the trial every possible colorable act or deed done by the defendants and their coconspirators, but no colorable behavior occurred in the critical period.

The closest approaches to advocacy which the witnesses reported in this period were two statements by persons apparently unauthorized to speak for the conspiracy. One Joe Holden, who was present at a meeting of the State Negro Commission, but who was not identified as having any position in the Party, was reported to have said that soon there would be a depression and then the Socialist revolution they all wanted. He was promptly told by the chairman of the meeting "to be careful how he expressed himself in these days." The trial judge originally admitted the hearsay, but then vacated his ruling and left it that, if additional evidence appeared that Holden was a coconspirator, the court would then consider whether to admit it or to strike it. No additional evidence appeared. One Josephine Willard, a member of the Bridgeport City Committee, was reportedly called to recite as a pupil at an educational class on the subject of the Party's attitude toward colonialism; she remarked that "the Communists would support the

masses of people in any country who were revolting to throw off the yoke of the capitalists and assist these people in establishing a democratic form of government." There was a total dearth of evidence that the Marxist classics were read, discussed, or disseminated during this critical period. This is the strongest possible proof that no such advocacy in fact occurred—that witnesses in a perfect position to observe could find nothing to report.

The Government witnesses admitted that during these years the defendants and their coconspirators were engaged in political advocacy, both within the ranks of the Party and to outsiders. The propaganda they distributed consistently decried violence and supported conventional goals of economic change and social reform. The jury, in order to convict, was asked to find that the legal advocacy was only a blind and that, unobserved by the FBI agents in their midst, the defendants used forbidden language. Three lines of circumstantial evidence were presented to support this somewhat strained inference. First, the conspirators allegedly engaged in such concerted and repeated illegal advocacy in the period shortly after the formation of the conspiracy in 1945 that the jury could infer continuation of such advocacy after March 1952. This approach is allegedly supported by examples of illegal oral remarks and the teaching of illegal written texts prior to 1952. Second, an agreement to advocate the use of force was allegedly reached between the Connecticut and national leaders at the 1945 reconstituting convention. And third, there was an alleged conspiracy to overthrow the Government in the future, from which the jury could infer a conspiracy to advocate such overthrow presently.

B. Oral Advocacy before 1952. We find it necessary to discuss in somewhat lengthy detail the incidents

culled from the record by Government counsel as examples of defendants' illegal oral advocacy of the use of force to overthrow the Government of the United States, for in our opinion they are the heart of the case.

Quoted as the strongest single example is the testimony that appellant Stone, while an officer in the New Jersey Communist Party in 1946, attended a social gathering at which she discussed communism with a non-Communist union steward. Asked how far the Party would go in this country to obtain their objectives, Stone replied, "Frankly, Amie, if necessary we'll have bloodshed." This was in the presence of a person introduced as the President of the Communist party in New Jersey. Subsequently Stone attempted to recruit the union steward into the Communist party. Stone's statement, uncontradicted by the leading New Jersey Communist, could be considered authorized by the New Jersey Party; and, in view of the uniformity of policy maintained within the state and national groups, it could also be found authorized by the national leaders of the Party. But the steward was not being urged to bloodshed, but only being asked to join a group which would take such dire steps "if necessary." This is a far cry from advocating and teaching the duty and necessity of overthrowing the Government of the United States, which is the crime charged in the indictment.

The second most damning statement was probably that of appellant Goldring to the Government witness Gay in the latter part of 1946. Goldring and Gay were state and local officers in the Communist party in Connecticut at that time; and both worked in the same section in the General Electric plant, meeting daily during rest hours, lunch, or regular working hours. On one occasion they were discussing Marxist-

Leninist theory, and Goldring expressed himself thus:

"He stated to me that the Communism in the United States could never be achieved through the use of the ballot; that the capitalistic system would never give up without a struggle, and that he agreed with the Marxist-Leninist theory that Communism would be achieved either through an internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. * * *

"He stated that the Communist Party would be the leader, in the leadership in the changing of the character of an imperialist war."

Here again the statement is good proof of the specific intent of Goldring, but it is not an example of incitement. The speaker was expressing his personal prognostication as to the way communism would be achieved; he was not trying to convince his hearer, a personal friend, to use force and violence himself.

A third incident occurred in 1945 at a meeting called to consider whether Connecticut's Communist Political Association should repudiate Browderism and take a more leftist course, as suggested in the Draft Resolution proposed by the *Dennis* case defendants. As will be discussed below, the Draft Resolution contained no approval of force and violence, although it did approve the idea of class war and "Marxism-Leninism." Andrew Onda, President of the state Communist Political Association, was the speaker; and he said

"* * * that Browder was guilty of revisionism, that Browder failed to look forward to the end of the war and the death of Roosevelt, and Browder had a plan for the slow gain of government control which was secretly undermining the United States Constitution by getting Party members into Government bureaus

and offices where they could make drastic changes in the Government. * * *

"Well, Onda said that Browder, following such a policy, had revised Marxism and Leninism inasmuch as it contained no revolution and it left the Communists no longer the vanguard of the working class. He said that a revolution in the Communist sense meant sudden and violent death and seizure of the Government overnight; that Browder was accused of being too kind to the capitalists.

"He said that if Browder had figured correctly he would have prepared the Party to fight Communists—Capitalism as soon as the aid of the capitalists was no longer needed."

Inasmuch as the Connecticut leaders did not join the top national leaders to launch a new course for the Party until the national convention in New York, which was held subsequent to these remarks of Onda's, they cannot be presented as examples of the conspiracy in action. If anything, the proof to be discussed later would suggest that the Connecticut leader, Onda, learned at the national convention that he had overestimated the national leaders' shift from Browderism, and that the *Dennis* case group was not prepared to peddle ideas as inflammatory as those of Onda. In any event, Onda's quoted statement would appear to be an argument about the proper orthodox dogma, rather than an effort to incite hearers to take action against their government.

The next incident occurred at a Communist party meeting in New Haven in 1949 attended by the defendant Resnick, Priscilla Small, and several other persons. Resnick was the defendant who was not convicted because the jury disagreed. According to

the testimony he was a member of the Party, but held very minor offices on a local level. Priscilla Small was a chairman of the youth branch of the Communist party in 1949; it is not clear whether this was a local or a state office. A witness testified:

"Sidney Resnick had a discussion with another person present, and he asked the person if he thought the Communist Party would have to use revolutionary arms to achieve socialism in this country. * * *

"The other person present stated that he didn't feel it would be necessary to use revolutionary arms to achieve socialism in this country. However, if it were necessary he would certainly be willing to do so.

"Then Sidney Resnick told him that the capitalists would do anything, including arms, to prevent socialism in this country as they knew that socialism would crush them.

"Then Resnick stated that the Communist Party would have to use revolutionary arms to achieve socialism in this country, and he pointed out the example of how only Communism was achieved in Russia by revolution.

"* * * Priscilla Small interrupted Resnick and stated that he shouldn't forget that there was a potential new recruit present and that the new recruit might get the impression that he was advocating force and violence.

"* * * Resnick told Priscilla Small that the Communist Party would have to protect their political standing as a group from the capitalists who would be using force and violence against them and, therefore, they would have to use arms to protect themselves."

Passing the question whether Resnick's doctrine of the necessity of using arms in self-defense violates

the Smith Act,[4] the incident suggests that Resnick's effort to incite the use of force not only was unauthorized by the party leaders' secret agreement, but was directly contrary to it.

Several of the incidents proffered by the Government, although perhaps relevant to show the specific intent of an individual conspirator, are too remote to be considered as examples of carrying out the conspiracy charged. For example, there was testimony that at a Communist party meeting in Chicago in 1948, attended by the defendant Tate, one Fred Fine spoke. Fine was an organizational secretary of the District of Illinois and an alternate member of the National Committee. He was discussing the sale of tickets to a mass rally where Henry Wallace was to speak, and according to the witness:

"He said that from the sale of the tickets, all indication—there are indications that the people are dissatisfied with the present conditions, and they are looking for new leadership.

"He said that the Communist Party must be prepared to give these people leadership so that they will—to prevent the rise of fascist regime.

"He compared this situation with a grain elevator. He says when a grain elevator is improperly packed, it causes spontaneous combustion, and explosion will result of it.

"He says that when this explosion occurs, the Communist Party must be ready to furnish the people

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[4] The district judge in his charge to the jury took the position that it could not convict for advocating force against some possible future government of the United States which "denied the right of the majority of the people to remove it from power by the peaceful, democratic means provided under our present constitution."

with leadership to overthrow the capitalistic government and replace it with a farm-labor government, farmers-workers government."

Even more remote are the examples of Communist teachings prior to the alleged formation of the conspiracy in 1945. If written, as well as oral, evidence of this sort is considered, this line of proof runs back to the day in 1848 when Marx and Engels published *The Communist Manifesto.* These incidents were not admitted as proof of the execution of the secret agreement, however, but for two very limited purposes: "First, to afford an opportunity for the offering of proof as to what was meant by the claimed 'reconstitution of the Communist Party' and what was meant by the claimed return 'to the principles of "Marxism-Leninism"' as those words and phrases were used in the testimony, in particular concerning the National Convention of the Communist Political Association in New York in July 1945 and, in general, concerning the nature, aims, objects and purposes of the alleged conspiracy from April 1945 to March 4, 1955. In other words, it is necessary to go back of 1945 to learn how the Communist Party was originally constituted and what it formerly stood for in order to find out what kind of a party it was and the nature and purposes of the party which was reconstituted in July of 1945 and similarly it is necessary to go back of 1945 to learn what Marxism-Leninism is, the principles of which are alleged to have been returned to in July 1945. Evidential materials prior to April 1945, including books and other writings, some of which go back to 1848, are to be considered by you only for the purpose of determining how they were interpreted and used by the defendants and other alleged co-conspirators (if you find they were so used) in furtherance of the alleged

conspiracy during its claimed existence, that is from April 1945 to March 5, 1955. * * *" The *second* purpose was to show the specific intent of the speaker. We consider this evidence in our discussion of the second and third lines of proof.

The remaining statements fall into several innocuous classes. Some express approval of the dictatorship of the proletariat, but do not suggest how it should be brought to pass. Some announce broadly that capitalism must be destroyed. Others suggest that there is inevitable antagonism between the classes, but do not say that force will be needed to resolve it. There remain some innuendoes that "overthrow" is desirable or inevitable, phrased in noninflammatory terms. Thus a teacher once stated at a Party class in Connecticut that "Fascism could also be prevented * * * by the working class led by the Communist Party taking action at the proper time to overthrow the present system of government." Another Party teacher at a class attended by Sid Taylor "made a statement that Socialism is inevitable only if we Communists fight for it. And he said Socialism is inevitable because we Communists will fight for it."

These statements, individually and collectively, are "[t]hat sort of advocacy [which], even though uttered with the hope that it may ultimately lead to violent revolution, is too remote from concrete action to be regarded as the kind of indoctrination preparatory to action which was condemned in Dennis. As one of the concurring opinions in Dennis put it: 'Throughout our decisions there has recurred a distinction between the statement of an idea which may prompt its hearers to take unlawful action, and advocacy that such action be taken.' * * * The essential distinction is that those to whom the advocacy is

addressed must be urged to *do* something, now or in the future, rather than merely to *believe* in something." *Yates* v. *United States, supra,* 77 S. Ct. 1064, 1078, 1080.

C. Written Advocacy before 1952. The Government urges that the forbidden advocacy was accomplished by the study and dissemination of certain books—the Marxist-Leninist classics—consisting of the works of Marx, Engels, Lenin, and Stalin. The conspirators encouraged the rank and file members to read these works, but there is no showing that stress was laid on the passages in the books which advocate the use of force and violence against the Government of the United States. The books fill a veritable library and contain ideas on almost every other aspect of the social sciences, as well as the means whereby a dictatorship of the proletariat can be achieved. On the last subject the different writers, expressing themselves in different times, countries, and contexts, had different ideas. Admittedly Marx wrote that the dictatorship of the proletariat could be accomplished in this country by the ballot. And admittedly Stalin wrote that the United States, at least during the period when capitalistic nations encircled Russia, required a bloody revolution, and not a peaceful one. Stalin's book, *The Foundation of Leninism,* was among those listed in the outline prepared by the national leaders for study by members; the book was discussed in Connecticut, but it was not shown that the discussion concerned this particular passage. The prosecution filled pages of the record with selected passages from all these works suggesting that the transition to socialism would be violent. The defense introduced other selected passages suggesting a peaceful transition. Neither side denied that the works contained both kinds of passages.

Thus the question emerges: Was it a violation of the Smith Act willfully to belong to a group that studied and recommended books which contained, *inter alia*, the notion that it is necessary to use force to overthrow the government of this country? We think not where, as here, there is no showing that that particular doctrine was culled out for emphasis. Without such emphasis there is only the dissemination of Marxist-Leninist literature—a body of writing as varied and contradictory as are most serious collections of thought put together by many hands in different countries and times. While some strands are so common to all the Marxist literature that they can be equated with it, the notion that force and violence must be used against the Government of the United States is not such a strand. *Schneiderman* v. *United States*, 320 U. S. 118. Similarly no reasonable jury could infer that the Gideon Society is conspiring to advocate the *lex talionis* merely because that idea is contained in some parts of the Bibles they distribute.

We find no examples of advocacy of the forbidden kind, either oral or written, by any Connecticut Communist in the years subsequent to the formation of the conspiracy. The failure to produce instances of such speech or teaching in these years is most significant, for during that period the Communist party in Connecticut was thoroughly infiltrated by Government informers, who testified at the trial. Ronald Gay, the first Government witness, had been a Party member from 1943 to 1948 and had been a member of the State Committee, the State Executive Board, and the State Youth Commission. Worden C. Mosher was a member from 1939 to 1950, when he was relieved of his duties as Financial Secretary. His son, Harold Mosher, was a member of the Party in Connecticut from 1947 to 1950. Both Moshers joined

the Party as FBI undercover agents. Harold Kent joined the Party in 1949 and began working for the FBI within the Party in 1952. He continued to be in the Party until 1954. He was a member of the State Negro Commission and eventually became a member of the concealed State Board. Antonio Pires joined the Party as an FBI undercover agent in 1952 and attended both elementary and advanced classes in Marxism. Rowena Paumi joined the Party in the 1940's and remained in it as an FBI informer until the time of the trial, cultivating extensive social contacts with the defendants and other Communists. Most of these informers reported regularly to the FBI and prepared thoroughly for the trial, minimizing the likelihood that inflammatory remarks occurred in their presence which were not introduced in evidence.

D. The 1945 Agreement. Since the Government informers, in the best possible position to observe, failed to note a single example of a Connecticut Communist engaged in illegal advocacy between the formation of the conspiracy and the filing of the indictment a decade later, it would seem that the negative had been established as completely as possible and that the jury could conclude only that no illegal advocacy in fact occurred. But it is not absolutely impossible that isolated examples of speech went unnoticed by the FBI; and we turn to circumstantial proof of such instances, with the caveat that the circumstantial proof would have to be most persuasive to overcome such direct negative evidence. The prosecution's second line of proof was that the conspirators in 1945 agreed to indoctrinate the rank and file members in the use of force and violence, from which the jury was to infer that the agreement was executed between 1952 and 1955.

The jury could have found that in 1944 Earl Browder caused the dissolution of the Communist party and the formation of the Communist Political Association; that William Z. Foster wrote a letter to members of the new National Committee criticizing the dissolution of the Party, but that the letter was suppressed; that in May 1945 Jacques Duclos, general secretary of the French Communist Party, condemned the C. P. A.'s policy of class peace; and that Duclos revealed the Foster letter to the Party rank and file. Subsequently, in June 1945, William Z. Foster and several of the *Dennis* case defendants, who were members of the National Board of the C. P. A., adopted a Draft Resolution criticizing the Browder period and praising the Duclos article. A special national convention was called for July 1945 to consider the Duclos article. In June and July in Connecticut, as elsewhere, local Communist groups discussed the Duclos article and the Draft Resolution. Andrew Onda, President of the Connecticut C. P. A., spoke out strongly against the Browder period and favored "return to Marxism-Leninism." At another meeting Onda expressed himself as favoring a "revolution" which he equated with violent death and the seizure of the Government overnight.

The Connecticut state committee eventually endorsed the Draft Resolution and the state convention similarly endorsed it, electing Onda to represent the state at the national convention which was to be held July 26–28, 1945, in New York City. At the national convention strict secrecy was the order of the day and only one hundred picked Communist leaders attended. They unanimously voted to adopt the Draft Resolution and to reconstitute the Party with Foster at the head. Many of the *Dennis* case defendants were elected to high office at this time. The national dele-

gates also adopted a constitution which dedicated the Party to "the principles of scientific socialism, Marxism-Leninism."

The Draft Resolution is conspicuously free of any suggestion that the Party approved of inciting revolutionary force and violence. The Resolution was concerned with developing "the broadest national coalition of all anti-fascist and democratic forces"—for the war with Japan was still on and Russia and the United States were military allies. The Party's domestic goals, far from violent revolution, were an immediate 20 per cent wage increase, the guaranteed annual wage, extended unemployment insurance benefits, public works, price and rent controls, extended social security, state and federal aid to farmers, the G. I. Bill of Rights, elimination of anti-Negro discrimination, antitrust prosecutions, etc.

The Resolution also discussed the significance of the change from the C. P. A. under Browder to the reconstituted Communist party. It condemned Browder for believing that after the defeat of Germany big capital would help the working class to maintain postwar national unity; for believing in the possibility of achieving national liberation of colonial countries through arrangements between the big powers; for arousing "tendencies to obscure the class nature of bourgeois democracy, to false concepts of social evolution and to minimizing the independent and leading role of the working class." It concluded with the exhortation, "We must wage a resolute ideological struggle on the theoretical front, enhancing the Marxist understanding of our entire organization and leadership."

The Constitution adopted at that time was even less incriminating. It dedicated the Party to the defense of the Bill of Rights and to the ultimate establishment

of socialism by the free choice of the majority of the American people. Other provisions punished members who conspired to overthrow the Government by force and violence. While the jury was not bound to find that these provisions were enforced, it could not infer from them an agreement to use force and violence against the Government.

Nor did the speeches of Foster and the other leaders at the convention intimate that the peaceful nature of the official documents was a facade for neophytes concealing a more sinister agreement among the initiated. While the speeches indicated that the Party retained its belief in class antagonism and the need for the eventual proletariat dictatorship, there was no whisper that such a state of affairs should come to pass by means other than peaceful or that the local leaders should incite their members to be willing to use violence to bring it to pass. The Government's leading witness, John Lautner, was present at the entire convention and did not recall anything to indicate a surreptitious agreement reached below the level of the words of the documents themselves. The opportunity was ideal—one hundred top leaders meeting in secret—but no agreement to advocate overthrow was suggested by anyone; and there was unanimous acceptance of Foster's line of the united front against Fascism, with a peaceful approach to socialism.

The prosecution contended that the documents themselves contained an arcane agreement to violate the Smith Act, for they committed the Party to the principles of "Marxism-Leninism" and, according to the prosecution, the men at the convention equated these principles with inciting force and violence. To link up this line of proof there must be a showing that the Connecticut appellants understood from the

term "Marxism-Leninism" that the national group was inviting or commanding them to preach violence. There is no evidence that any Connecticut Communist expressed himself as construing the resolution in that fashion. Rather, there are suggestions in the record that the Connecticut leadership thought that the Party disapproved any talk of force, even among the membership. To establish the fact that the Connecticut Communists, including the appellants, understood the term "Marxism-Leninism" to be synonymous with advocacy of force the Government called John Lautner to the stand as an expert on communism. Lautner's qualifications as an expert were his experience in various full-time Party jobs from 1929 to 1950, his occasional experience as a teacher of Party classes in Marxism in New York, his attendance at local and national Party schools in Marxism, and his personal conversations with Eugene Dennis, Elizabeth Flynn, and two other national leaders just prior to the 1945 convention. The relevant content of these conversations was not revealed to the jury beyond the suggestion that Elizabeth Flynn was disgusted with the way some top leaders had switched allegiance from Browder to the new controlling group. Lautner held fairly high office in the New York State Party from 1947 to 1950, but was never one of the top state or national leaders. He was never on the National Board or National Committee, but was present at the 1945 National Convention to assist in keeping out unauthorized persons.

The appellants attack Lautner's qualifications as an expert and his credibility. They attack his qualifications because he left the Party prior to 1950 and never knew them personally. Those facts would not prevent him, however, from testifying to general use of terms among Communists in 1945. They further

object that he never represented the Party as a national spokesman and was not recognized as a theoretician within the Party. Such background was not necessary for him to give his opinion on this limited point. The issue of his credibility—which seems to rest on the fact that he is a full-time professional informer who has testified to the same general facts in every Smith Act case since *Dennis*, as well as before numerous Grand Juries, investigating committees, and boards—was properly argued to the jury and is not for us to decide. Certainly the discrepancies between his prior public testimony and his testimony in the trial below were not so great that the jury could not believe him.

Lautner did not profess familiarity with Connecticut Communists, but testified that in his experience as a member of and functionary in the Communist party from 1929 to 1950 in Ohio, West Virginia, Canada, and New York, and in the classes he attended and taught, and from his conversations with top level national leaders who attended the 1945 convention, Marxism-Leninism "*was* the theory and practice of the revolutionary class struggle. It was the application and practice of the teachings of Marx, Engels, Lenin, and Stalin to bring about in this era the proletarian revolution and the dictatorship of the proletariat." He further testified that the reconstitution of the Communist party in 1945 "meant giving up the—repudiating a collaborationist policy, a class-peace policy, and going back to a class-war policy." Assuming that the jury believed Lautner and that it inferred that the Connecticut Communists viewed the 1945 convention and resolution in the same way as Lautner, it could conclude that the conspirators reached agreement at that time on the abstract doctrines of Marxism-Leninism: that the capitalists and the proletariat were

hopelessly antagonistic; that the proletariat would eventually replace the bourgeoisie as the ruling class; that the working class once in power should establish a dictatorship to wipe out all vestiges of other classes.

Lautner did not equate "Marxism-Leninism" with force and violence. He did not claim that it was Aesopianism and did not suggest that the term implied that the dictatorship of the proletariat should be achieved violently. There is no basis for inferring that the Connecticut appellants understood the 1945 Resolution and Constitution to approve of the practice of inciting violent revolt.

E. The Revolutionary Aims of the Communist Party. The third line of proof was aimed at establishing that the Party expected to play a leading role in a future violent *putsch* against the government of this country. Lautner gave his expert opinion of the aims of the Party in the years 1929–1942 and 1945–1950:

"The ultimate aims and objectives of the Communist Party of the United States was, when given certain conditions * * * certain objective and subjective conditions on one hand when the country will find itself in a crisis, deep crisis, economic crisis, or a war situation. When a condition exists that the influence of the state, the influence of the Government * * * is on the—Is not as it used to be, when the influence of the Government and the power of the Government is ignored, or the Government cannot rule with the accepted measures, cannot carry on its functions with the accepted measures as it did prior to this crisis, when this situation exists. And on the other hand, when the Communist Party has a decisive influence with large sections, key sections of the working class, when the Communist Party has

decisive influence with allies of the working class such as farmers, the Negro people, small business men.

"When these two conditions exist the Communist Party is ready to challenge the existing order of the system as it is represented by the Government. When the Communist Party is in this condition and is ready to challenge through force and violence to overthrow the existing system of regime—

"And ready to lead through the proletarian revolution to destroy and smash the ready made state machine and establish through the dictatorship of the proletariat a new social order. When these conditions, when this situation exists, these are the ultimate aims and objectives of the Communist Party."

The jury could perhaps infer that the aims and objectives thus described by the witness Lautner were generally shared by Connecticut Communists as well as others. Corroboration for this view could be found in the Party's practice of concentrating its efforts in the labor force, its secret meetings and clandestine maneuvers, and its internal discipline.[5] When these characteristics are viewed together with the evidence already described and every inference is drawn

[5] The prosecution stresses the proof of industrial concentration and of concealment. But these do not rationally raise any inference that the appellants engaged in a plot to advocate insurrection at the time they were hiding and seeking factory jobs. The industrial concentration possibly suggests a conspiracy to commit sabotage, espionage, or political strikes going beyond mere labor proselyting; but it does not point very directly toward illegal exhortation. Similarly, concealment is consistent with any unpopular or illegal enterprise; but the jury could not tell the nature of the enterprise from the mere fact of concealment. Once the existence of the crime were shown by other evidence, these facts might be relevant as corroboration or as to specific intent.

against the defendants, it is reasonable to find that the bulk of the Party membership was in agreement on the desirability of the Party some day leading a violent insurrection against the Federal Government. From the members' continued membership despite persecution the jury could further infer their willingness personally to engage in such a *putsch*, should the opportunity arrive and the signal be given.

The record would thus afford proof of seditious conspiracy or conspiracy to commit insurrection or revolution. The remaining question is whether or not the jury could infer from the conspirators' revolutionary ardor that they were presently committed to *advocating* jointly the use of violence. We think not. This line of proof at most establishes the conspirators' long-range objectives; it does not cast light on their agreement as to tactics to be pursued in the period 1952–1955. While it is certainly within the realm of fancy that men who eventually want violent insurrection will presently teach the necessity of such behavior, it is hardly strong proof of such teaching. For would-be revolutionaries are at least as likely, as an abstract proposition, to adopt the tactic in years of unpopularity of decrying the use of violence and posing as peaceful social reformers. We need not list the whole spectrum of tactics available to the conspirators, for the jury was not free to speculate as to which hypothetical course would most appeal to a group of would-be revolutionists. It was restricted to the evidence in the record, which, as previously demonstrated, pointed away from any suggestion that illegal advocacy was the tactic pursued in these years.

Nor are the three lines of circumstantial proof sufficient when taken together. The use of lawful

speech, an agreement to share abstract revolutionary doctrine, and an agreement to use force against the Government in the future do not add up to a conspiracy presently to use illegal language. The language which the appellants agreed to use and did use is undoubtedly anathema to the bulk of the American populace, but it is not unlawful. We can neither sustain their conviction for such talk nor permit the jury to draw wholly unwarranted inferences that on occasion the appellants may have slyly made much more sinister remarks. Since the proof does not establish a conspiracy to use illegal language, none of the appellants could have been a member of such a conspiracy: and all five convictions must be reversed.

We are reluctant to upset these convictions, not because the appellants are persons who seriously and angrily criticize the most cherished American institutions—for that is their constitutional right—but because we are loath to disturb a jury's resolution of a contested factual issue. But where the jury's finding is not supported by the record it is our duty to reverse. Here, on the critical issue of whether these defendants or the Party engaged in criminal speech during the three years prior to the indictment, there is no direct evidence of a single example of such advocacy, despite ample opportunity for observation by FBI agents with access to the conspirators' innermost councils. The circumstantial proof was too full of gaps to be probative. We would mock both fair trial and free speech as meaningful constitutional guarantees were we to ignore the deficiencies of this record.

III. The Disposition of the Case on Remand

In the *Yates* case the Supreme Court stated the criteria for deciding when Smith Act appellants

whose convictions were reversed should be acquitted and when they should be compelled to stand trial again. The Court indicated that the quantum of proof required to allow the Government to retry an appellant was less than the amount needed to sustain the original conviction. Consequently, although we find the proof inadequate to support the convictions, we must still consider separately whether or not on retrial the Government could make a better showing.

As we understand the *Yates* decision the Supreme Court found that there was a substantial likelihood that the prosecution, given another opportunity, could establish the existence of a conspiracy smaller than the Communist party, which advocated violence to the inner circle of initiates who comprised the concealed board. Here Government informers infiltrated the concealed state board and observed nothing even mildly incriminating. We do not know how the Government could make a better showing on retrial than it did on the first attempt. Consequently we order the district court to enter judgment acquitting all five appellants.

In this lengthy and difficult case we acknowledge the able professional assistance given us by counsel on both sides, both on the original presentation and later in analyzing the turn of events resulting from the recent decisions of the Supreme Court of the United States. In particular do we commend the fine discharge of a noteworthy burden by those lawyers who were assigned to the task by the court.

Reversed for dismissal of the indictments.

HINCKS, *Circuit Judge*, dissenting:

I accept the account of the agreement charged, as recited in the majority opinion and will not repeat

the recitals thereof. But I cannot accept my brothers' opinion that the evidence of a conspiratorial agreement to advocate proscribed action was in any respect insufficient to support the jury's verdict. There was ample evidence of the following.

The Communist Party, U. S. A. (hereinafter referred to as the Party) was founded in 1919 on the teachings of Marx and Engels. In 1943, the Party was succeeded by the Communist Political Association (herein C. P. A.) which had been formed under the leadership of Browder, as General Secretary of the Party, to carry out the decisions arrived at by the leaders of the United States, Great Britain and Russia at Teheran.

On June 2, 1945 the National Board of C. P. A. which included co-conspirators Foster, Dennis, Williamson, Davis, Green and Thompson adopted a resolution (hereinafter referred to as the National Resolution) criticizing the Browder regime for its revision of basic Marxist-Leninist theories.

At the National Convention of C. P. A. in July 1945 it was unanimously voted to reconstitute the Party with co-conspirator Foster as its head and other co-conspirators were elected to the National Committee or the National Board. A Constitution was adopted which dedicated the Party "to the principles of scientific socialism, Marxism-Leninism." It is true that the Constitution ostensibly called for the "establishment of socialism by the free choice of the majority of the American people." And it not only contained no express provision calling for the use of force but even purported to require the expulsion of members who conspired to overthrow the Government by force.

However, that the Constitution was in truth a charter of violence is demonstrated by a mass of evidence

that it accomplished a "reconstitution" of the Party as it existed prior to the C. P. A. interlude and again dedicated itself to Marxism-Leninism. Thus there was evidence that at a school sponsored by the old Party in 1939 of which the appellant Stone was the leader, co-conspirator Flynn was followed as a lecturer by another emissary of the Party, Bittleman, who said (*inter alia*) that, the working class throughout the world and in America needed a Party of a new type, a Party that was well disciplined, a Party based in the fundamentals of Marxism-Leninism, a Party that was able to mobilize and organize the people *to overthrow their own government,* a Party that was able to, through the dictatorship of the proletariat, smash the rule of the capitalist class in their own government and in its place *set up a new form of government,* the dictatorship of the proletariat. Bittleman further said that he was sure that the students understood by that time that the basic foundation of *Marxism-Leninism* was the dictatorship of the proletariat, and that it was the dictatorship of the proletariat that guaranteed that the Party's drive for power would be sucessful. *It guaranteed that the Party would mobilize the workers to overthrow their own government. It guaranteed, through force and violence, that the old remnants of the capitalist class would be destroyed* and it guaranteed that the new form of government under the leadership of the Party would continue to reorganize the government of the country that was overthrown. Bittleman further stated that he believed by now that the students understood the necessity for understanding Communist theory, the theory of Leninism, which is the experience of the working class of the world as presented in the writings and teachings of Engels, Marx, Lenin and Stalin and *that the students understood that*

Leninism could be applied and used by the Communist Party in every country of the world to organize and mobilize the people to overthrow one's government.

Such were the teachings and objectives to which the Party returned upon its reconstitution in 1945.

The Constitutional express dedication to Marxism-Leninism necessarily imports that the violent overthrow of government was a Party objective. The Party generally, and the defendants and their co-conspirators in particular, recognized Marx, Engels, Lenin and Stalin as authoritative exponents of the Marxist-Leninist classics.* Although Marx, writing in the mid-nineteenth century, may have believed that socialism could be achieved in the United States without violence, the writings of Lenin and of Stalin, who was living and in power until long after the conspiracy charged was formed in 1945, plainly teach that for that end the violent overthrow of the United States is necessary. Stalin wrote:

> "Lenin is right in saying: 'The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one.' "

And again:

> "Marx's qualifying phrase about the Continent gave the opportunists and Mensheviks of all the countries a pretext for proclaiming that Marx had thus conceded the possibility of the peaceful evolution of bourgeois democracy into a proletarian democracy, at least in certain countries outside the European continent (England, America). Marx did in fact concede that possibility, and he had good grounds for conceding it in regard to England and America in

*The appellant Ekins testified that Party instruction contained in these "classics" came from "the horse's mouth."

> the 'seventies' of the last century, when monopoly capitalism and imperialism did not yet exist, and when those countries, owing to the special conditions of their development, had as yet no developed militarism and bureaucracy. That was the situation before the appearance of developed imperialism. But later, after a lapse of thirty or forty years, when the situation in those countries had radically changed, when imperialism had developed and had embraced all capitalist countries without exception, when militarism and bureaucracy had appeared in England and America also, when the special conditions for peaceful development in England and the United States had disappeared—then the qualification in regard to those countries necessarily could no longer hold good.
>
> * * * Today, both in England and in America, the 'preliminary condition for every real people's revolution' is the smashing, the destruction of the 'ready-made state machine' (brought in those countries, between 1914 and 1917, to general 'European' imperialist perfection)."

Lenin in his writings adopted Engels' definition of "revolution," *viz.*:

> "* * * Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i. e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries * * *".

There was credible evidence that the provision in the Constitution of 1945 proscribing, under pain of expulsion, advocacy of violence, was a sham and a blind to conceal the real purpose of the Party. And

for its devastating impact on the sincerity of that provision it is significant that this same Bittleman without sacrifice to his standing as a Party member, in the December, 1949, issue of the magazine "Political Affairs" which received wide distribution not only in Connecticut but also throughout the Party generally, published an article asserting that Stalin's *History of the Communist Party of the Soviet Union* "is a fountain-head of Marxist-Leninist knowledge * * *" and "a *guide to* Marxist-Leninist *action* * * *" embodying "the theoretical and *programmatic* positions of Marxism-Leninism." (Emphasis added.) And he quotes Stalin as saying "one must be a revolutionist, not a reformist; one must follow and practice the policy of class struggle in all fields, not of class collaboration."

The Connecticut Branch of the Party and its officers did not stand aloof from the Party policy of violent overthrow. In June of 1945, Andrew Onda, a named co-conspirator who then was President of the C. P. A. of Connecticut, at Bridgeport and New Haven meetings of C. P. A. advocated return to Marxism-Leninism and attacked Browder's revisionism because it contained no revolution which, he said, in the Communist sense meant sudden and violent death and seizure of the Government overnight. One Kreas, later a member of the State Committee of the Party, supported Onda's advocacy of violence and revolution. Shortly thereafter, at the State Convention of C. P. A. in Bridgeport, attended by about 100 persons, including the appellant Goldring, Onda urged members to establish Marxist-Leninist classes and to put the Party program into practice; and another delegate had stated that a peaceful transition to socialism was impossible. It was then voted to accept the National Resolution referred to above and Onda

was elected to represent the C. P. A. of Connecticut at the forthcoming National Convention (which took the *unanimous* action described above).

In August 1945 the C. P. A. of Connecticut held a convention at Bridgeport at which the State C. P. A. was dissolved and the Communist Party in Connecticut was reconstituted as a Marxist-Leninist Party in line with the action taken at the National Convention. The State Convention elected a State Committee and voted to initiate Marxist-Leninist classes. Thereafter the Party in Connecticut proceeded to implement within the state the general plans and policies of the National Party. It operated under the Party principle of "democratic centralism" whereby all decisions of the National Convention, mandated to the National Committee between Conventions, were obligatory on all members of the Party throughout the United States. Representatives of the National Party, including Pittman, Betty Gannett, Siskind, Elizabeth Flynn, Beitenkapp, Levine, Wilkerson, and Stachel spoke at Party meetings in Connecticut. In 1947, Henry Winston came to Connecticut and, during dinner with the appellant Taylor, discussed Party policies. The same year, Stachel, addressing a local party gathering in New Haven, stated that the strategy of the Party was to destroy capitalism and establish a dictatorship of the proletariat. For many of the above-mentioned Connecticut classes in Marxism-Leninism, the local teachers distributed and taught from an outline based upon "The Fundamentals of Marxism," drafted by and distributed from the National Office. And later, within the indictment period, the appellants who were leaders in the State Party, gave unquestioning obedience to an order from the National Office requiring them to go into a hidden underground apparatus and personally bestirred

themselves to implement the National policy of union infiltration.

Taking into account the offices which the appellants (other than Stone) held in the State apparatus and the offices held by Stone and the named co-conspirators in the National organization, the unbroken cooperation in different lines of activity between the National Party and the State Party, the numerous contacts between the appellants and officers and representatives of the National Party, the nature of the activities undertaken by the appellants in implementing the policies of the National Party and the documentary evidence showing that violent overthrow was a Party objective, the jury, in my opinion, could properly find the existence of the conspiracy charged.

But my brothers say that proof of the conspiracy charged is insufficient for lack of proof of advocacy, and especially advocacy which incites to action, citing *Yates v. United States*, 354 U. S. 298. I disagree. I think that nowhere do the convictions now on appeal conflict with *Yates*. Certainly the charge below was not subject to the defect which was found in the *Yates* charge; the *Silverman* jury was plainly instructed that, to convict a defendant, the Government must prove as one element of the offense that while a member of the conspiracy to teach and advocate violent overthrow he had "knowledge of its unlawful purpose" and had the "intent that such teaching and advocacy be a rule or principle of action, and with the intent that such teaching and advocacy be in language reasonably and ordinarily calculated to incite persons to action."* This was the very instruction

*This instruction was supplemented in the *Silverman* charge by the following:

"The words 'rule or principle of action' refer to the nature of the thing to be advocated. They mean that the

approved in *Dennis* v. *United States*, 341 U. S. 494, for lack of which the convictions in the *Yates* case were reversed. Not even the appellants criticize the judge's charge which in my opinion was lucid, fair and adequate in every respect.

I turn, therefore, to examine the record for evidence of advocacy of action in the light of the *Yates* opinion. I note that the appellant Ekins, who alone

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advocacy must be a rule or principle which the alleged co-conspirators intend and calculate people will act upon; and this rule or principle must call for overthrow and destruction of the Government by force and violence as speedily as circumstance will permit.

"The words 'reasonably and ordinarily calculated to incite' refer to the nature of the words to be used. They mean words which would arouse or stir a reasonable person to act, and not merely to study or to think things over; and 'to act' means simply to do something affirmative in furtherance of overthrowing and destroying the government of the United States by force and violence as speedily as circumstances would permit. It need not be shown the words actually had that effect on anyone but that the words are such as are reasonably and ordinarily calculated to have such an effect and were intended to have such effect.

* * * * *

"No intent such as is charged in this case could be inferred from the teaching of the abstract doctrine of overthrowing and destroying the Government by force and violence or by teaching a course on the principles, doctrines and implications of Marxism-Leninism or Communism.

"The expression of a belief or opinion that the violent overthrow and destruction of the Government is probable or inevitable does not constitute teaching or advocacy. Likewise, prediction or prophecy is not advocacy. The Smith Act is not concerned with the violent overthrow and destruction of some imaginary future government which would not permit the majority of the people freely to select their form of government through the ballot box."

of the defendants below took the stand in his own defense, testified on direct examination that his understanding of Marxism-Leninism was illustrated by passages in the *History of the Communist Party of the Soviet Union* from which he read to the jury the following:

> *"Mastering the Marxist-Leninist theory means* assimilating the substance of this theory and learning *to use it in the solution of the practical problems of the revolutionary movement* under the varying conditions of the class struggle of the proletariat.
>
> * * * * *
>
> "The Marxist-Leninist theory is not a dogma, but *a guide to action."* (Emphasis added.)

Moreover, there was a volume of evidence that the Communist Party of Connecticut in conformity with instructions from the National Board initiated classes for instruction in Marxism-Leninism. This policy was adopted at the very time when the Connecticut Communists in 1945 voted to go along with the Reconstituted Party; it was supplemented by activity in selling Marxist literature. The appellant Dimow under date of February 3, 1947 sent out a letter to "Dear Comrades" advocating that "we must increase our study of the basic Marxist theories" and announcing that "taking steps in this direction, the education committee of the Party has organized a class on the fundamentals of Marxism." In the list of recommended reading material accompanying this letter was *Foundations of Leninism,* Chapter on Party History of C. P. S. U. At one of these classes the instructor said "Socialism is inevitable because we Communists will fight for it." At another, the appellant Taylor said: "Come the revolution, we'll allow the people to have the church for a little while." And at

still another, the appellant Dimow said "that the capitalists sought war with Russia, and if we could stall them off with a peace talk and give us time to develop China, that if they didn't attack us within the next few years why, Russia would be able to take over the capitalistic world." At classes in 1947 in Connecticut, organized by Taylor and attended by Goldring, open only to Party members, conducted by an instructor from the National Office in New York, it was said that Fascism could be prevented by the working class led by the Communist Party taking action at the proper time to overthrow the present system of government. At a class in Bridgeport in 1953, the appellant Ekins said "that we Communists support a just war [such as] one where the workers are trying to revolt and overthrow the yoke of capitalism * * *" and "that it was up to us Communists to see that they [the workers] were ready and willing to fight for their freedom."

The advocacy of classes for instruction of Marxism-Leninism as a means to the violent overthrow of the Government was by no means confined to co-conspirators not named as defendants. Also directly and personally involved in such activities were Ekins, Taylor, Dimow and Goldring. Against the background evidence of this case the jury might properly have concluded that these classes were not "a seminar in political theory," to use again Justice Frankfurter's phrase in his concurring opinion in *Dennis* v. *United States*, *supra*, page 546. Cf. *Wellman* v. *United States*, 6 Cir., 227 F. 2d 757.*

*I do not overlook the fact that in *Wellman* on June 24, 1957 certiorari was granted, the judgment of the Court of Appeals was vacated, and the case "remanded for consideration in the light of *Yates*" and its companion cases. 354 U. S. 931.

In my opinion, the formation and operation of such classes constituted some evidence of a conspiracy of advocacy in terms of action. As the defendant Ekins testified, "there is a very very close relationship between the immediate and the ultimate aims of the Party." That advocacy to initiate and conduct Marxist-Leninist classes may constitute a call to action finds direct support in the *Yates* opinion, 354 U. S. at 331, which recognized the incriminating effect of evidence tying certain of the defendants in that case to Party classes "conducted in the San Francisco area during the year 1946, where there occurred what might be considered to be the systematic teaching and advocacy of illegal action which is condemned by the statute." As Justice Harlan said in that opinion:

> "It might be found that one of the purposes of such classes was to develop in the members of the group a readiness to engage at the crucial time, perhaps during war or during attack upon the United States from without, in such activities as sabotage and street fighting, in order to divert and diffuse the resistance of the authorities and if possible to seize local vantage points."

But that was by no means all. There was massive evidence, in connection with the activities of the Connecticut Branch, of advocacy of "industrial concentration," i. e., the Communist infiltration of union labor. In classes and meetings Party members were urged to join unions in key industries concealing their membership in the Party. At most of the monthly meetings of the Connecticut State Committee of the Party from 1945 to 1947, pursuant to advocacy by the National Office the local leaders mapped out plans for infiltrating unions and increasing Communist membership in basic Connecticut industries.

The committee at that time was mainly interested in recruiting workers in the brass industry (so vital to our national munitions potential) in Waterbury and Bridgeport; as a result of many discussions, the Party assigned the State Secretary to direct infiltration in Bridgeport and a full time salaried organizer to the Waterbury area. In that connection the State Committee recommended that local city branches be broken down into cells or clubs for particular industrial corporations, such as the club in the General Electric plant in Bridgeport, and urged members to take jobs not only in the brass industry but also in Pratt & Whitney in Hartford (so essential to our aviation potential). At the State Committee meetings reports were made on the progress of this program of "industrial concentration"; local leaders were criticized for lack of greater progress in infiltration into the principal union in the brass industry; this policy of "industrial concentration" was generally discussed and reports of the industry-branches were given.*

In the General Electric club the leaders normally conducted a caucus in advance of union meetings** at which the Communist members, according to testimony of a Government witness, "agreed on a program of action that should be taking place at the next union meeting," and "followed out the agreed upon program at the next union meeting." This was in accordance with the order of the state chairman of the Party who said that "the Party policy was that once a program had been agreed upon by the members that was the obligation of all the members to follow

*This evidence came in part from a Government witness who at the time was a member of the State Committee.

**Goldring was reported to have attended such a caucus.

up that program." Slates of persons to be nominated for union office were agreed on at such meetings of the Communist locals and with Communist support Communists were thus elected to union office in the General Electric union. In a New Haven meeting in 1947, Stachel, a representative of the National organization, stated "that the Party's main strategy today was to attach ourselves to many groups and organizations in order to curb capitalism whenever possible." And in answer to a question by the appellant Goldring he advocated "that we should always recruit as many among the working class as possible." In a Bridgeport committee meeting in 1953, Goldring is reported to have said that he knew it was difficult for women members, especially those with children, to go to work, but that "it was necessary for these women to make a sacrifice, of even hiring baby sitters, if necessary, for their children, so that they could go into the basic industry in the area * * *. This is the only way that the Party can get its program to the masses in the shops."

The call for industrial concentration continued well into the indictment period. In January 1953, a special meeting was called of the General Electric cell in Bridgeport. The appellants Taylor and Goldring were present. Taylor introduced the appellant Stone as "Comrade Ruth, a member of the National Committee of the Communist Party." She stated that the purpose of the meeting was to formulate plans for concentration in the General Electric plant. She was reported as having said: "The best way to accomplish this * * * is by getting a person who is not known as a member* of the Party to infiltrate the

*One of the witnesses, Americo (Amie) Fiori, who had been a labor official in the I. U. E., testified that Stone had approached him in 1947 and solicited him for membership in the Party; that previously he had asked her how far the

leadership of the union in the General Electric plant." Goldring agreed that the Party should bring in more members from the outside into the plant to work. Stone then is reported to have added that the Party "should make every effort to locate this person who was not known as a Party member or even a left wing [*sic*] to infiltrate the leadership of the union, and that we in Bridgeport should get more people into some of the key departments in the shop as the maintenance department and the powerhouse." A month later another meeting was held at Bridgeport. The same appellants were present. Stone announced a change of tactics: thereafter the members were to have nothing to do with the United Electrical Workers Union in G. E. because that union was dead; instead they were to join and work in the "right wing" union at the plant.

There was a meeting of an industrial cell in New Britain, in March 1953, organized for the "Niles-Bement-Pond" plant. Taylor attended the meeting and after informing the cell members that a Local 405 U. A. W., C. I. O. election was pending urged two members to "get themselves elected" to union offices. He was reported to have said "You go back, make sure you find someone that will nominate you. I don't care how you do it. Make sure you get yourselves elected into office." In May 1954, the witness Pires, then a Party member, was told by one Vittoria, the Hartford chairman, that Taylor had ordered Pires not to attend any Communist front meetings in the future and was to concentrate on Niles-Bement-Pond alone. The same month, a regional trade council meeting of the Party was held in New Rochelle, New

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Party would go in this country to gain their objectives and she had answered "Frankly, Amie, if necessary we'll have bloodshed"; that he refused to join and Stone offered to keep his membership secret if he would join.

York. The appellant Stone, who led the meeting, received industrial concentration reports on New Jersey, Connecticut and Boston.

There was further proof of advocacy of action in connection with the organization and continuing functioning of a carefully conceived underground apparatus as a part of the conspiracy charged. This was an accepted communist tactic, to be utilized when the Party was weak and the opposition strong. Lenin pointed out that "during the period of reaction they [the Party] should learn how to retreat properly, how to go underground, how to preserve and strengthen the illegal party, how to make use of legal opportunities of all legally existing organizations, especially mass organizations, in order to strengthen their connections with the masses."

Elaborate plans were formulated and put into effect in New York state by the National Office in 1948. The immediate objective of the plan was to avoid surveillance while allowing the Party to conserve membership strength and continue, and by means of subterfuge and infiltration to maintain and increase Party influence in various sectors of the economy, especially industrial labor. The master plan comprised a pyramidal organization of three-man cells, each of which appointed a committee to organize and direct cells in successively lower echelons with vertical, but no horizontal, communication between cells. Thus the organization was such that directions could be transmitted, but only downwardly, through a chain of command from headquarters to the lowest echelon without disclosure of other cells and a minimum disclosure of Party membership. By March of 1953, there had been established in Connecticut an underground apparatus which if not identical with that in New York state at least had strong points of resemblance.

In 1951 the Connecticut leaders including Taylor, Ekins and Goldring were instructed to go underground and left their homes and jobs for extended periods. Taylor, the Connecticut chairman, under instructions from the National Office, went to New York, started to wear a hat, grew a bushy mustache, lost considerable weight, assumed the *alias* of Vito, dyed his hair, and started to learn Italian so that he might open a barber shop as a front for Party activities. He was in hiding from 1951 to 1954; during most of this time he was being financed by the National Office and kept in contact with the Communist Party through a courier. Other appellants under similar instructions affected disguises, assumed aliases and went into hiding for their continuing operations.

In February 1954, in anticipation of a Senatorial Committee investigation of Communist infiltration into Bridgeport industries, the entire governing structure of the Connecticut Party was reorganized. A five-man "Concealed State Board" was put in charge of Party activities in Connecticut, subject of course to the National Board. Taylor, who was chiefly responsible for the reorganization, was its chairman; Ekins was the secretary and Goldring was a member.* The Government informer Kent was made a member of the Board upon recommendation by Stone and approval by the National Office. The officers, with the exception of Goldring, were "unavailable persons"; i. e., not to be communicated with by any members of the Party other than superior personnel in the National Office. Goldring was the sole "open Party member" for the state of Connecticut to whom communication might be directed. He was provided with a post office box in

*The other member was a representative of an international union having locals in the brass industry.

Bridgeport, and it was his job to do all the corresponding for the Connecticut Party. The Party in the State also maintained its private communication system whereby secret "drops" were provided by the receipts of messages which were relayed by trusted couriers. The meetings of the Concealed State Committee were held mostly in New York and elaborate precautions were required of, and practiced by, members to prevent discovery of the time and place of such meetings. These security measures were deliberately and immediately designed to avoid surveillance of the F. B. I. and disclosure of Party activities.

In the *Yates* case there was evidence that "individuals considered to be particularly trustworthy were taken into an 'underground' apparatus and there instructed in tasks which would be useful when the time for violent action arrived." As to this it was held: "we are not prepared to say, at this stage of the case, that it would be impossible for a jury, * * * to find that advocacy of action was also engaged in * * *." 354 U. S. p. 332. In the case now before us the advocacy *of action* seems plain. As advocated by co-conspirators in the National Office the appellants Taylor, Ekins and Goldring forthwith formed an underground apparatus, left their homes and jobs, dyed their hair, took on false names and then under the rigid discipline of the Party carried on Party activities throughout the principal cities of the State of Connecticut under the supervision of "Comrade Ruth," the appellant Stone, who when previously asked as to how far the Party would go had replied: "Frankly, * * * if necessary we'll have bloodshed." In connection with the proofs of a conspiracy of advocacy, surely the jury might treat the appellants' furtive conduct in connection with the

"underground" as evidence that the conspiratorial advocacy was in terms which called for action.

To summarize. These appellants who were the leaders of the Party in the State of Connecticut and who submitted themselves to the rigid discipline of the Party which was under the control of their co-conspirators in the top echelon of the National organization, joined in an agreement not only to advocate the duty and necessity of violent overthrow as exemplified in the Marxist-Leninist classics but also themselves promptly and continually throughout the conspiracy period took prompt action to put into effect such advocacy by initiating and supporting classes in the Communist classics. They also joined in advocating the Party policy of industrial concentration and in advocating Party operation through an underground apparatus. They personally and over a period of years extending into the indictment period responded to such advocacy by prompt action in practicing the policy of industrial concentration and the formation of an underground apparatus through which they managed the Party throughout Connecticut.

To be sure, their advocacy and their action did not involve present use of dynamite or bayonets. But the evidence amply supported a finding that their systematic advocacy and practice of propaganda, industrial concentration and furtive underground operation were all advocated and practiced as a means to the accomplishment of state socialism by violent overthrow of the existing government; that, as the appellant Ekins put it, these immediate objectives had "a very very close relationship to the ultimate aims of the party." In the *Yates* opinion it was said that the test of *advocacy of action*, which is essential to the offense denounced by the Smith Act, is "that those to

whom the advocacy is addressed must be urged to *do* something, now or in the future, rather than merely to *believe* in something." I think the jury's verdict was in no respect inconsistent with that test.

My brothers concede that on the evidence "it is reasonable to find that the bulk of the Party membership was in agreement on the desirability of the Party some day leading a violent insurrection against the Federal Government" and that "[t]he record would thus afford proof of seditious conspiracy or conspiracy to commit insurrection or revolution." But they hold that there was a total failure to prove conspiracy to violate the Smith Act because "[t]his line of proof at most establishes the conspirators' long-range objectives; it does not cast light on their agreement as to tactics to be pursued in the period 1952–1955." I agree except as to the last-quoted clause. As to that, it appears to me that the evidence of continuing advocacy as to the necessity for violent overthrow, of advocacy of union infiltration, and of advocacy of Party operation by an elaborate underground apparatus casts a brilliant light on their agreement as to 1952–1955 tactics, which silhouettes a present program of integrated action.

My brothers also say the critical issue is whether the appellants or the Party "engaged in criminal speech during the three years prior to the indictment." I find the phrase "criminal speech" neither in the Smith Act nor in the Conspiracy Act. But I do find an abundance of evidence to show that within that period the appellants and their co-conspirators agreed to advocate the violent overthrow of our government and to advocate a present program of action directed to that end. In my opinion, the evidence of conspiracy was enough to sustain the convictions without

any collision whatever with the Constitutional guarantees of free trial and free speech.

The appellants have pressed on appeal several other claims of error. All of these I have carefully studied and find without merit. However, since my brothers order the convictions reversed and the appellants acquitted on the sole ground that there is insufficient evidence of a conspiracy having as its object advocacy of action, I too will not extend my discussion beyond that issue. I would affirm as to all appellants.

APPENDIX B

18 U. S. C. 2383 provides:

§ 2383. Rebellion or insurrection.

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

18 U. S. C. 2384 provided during the relevant period:

§ 2384. Seditious conspiracy.

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $5,000 or imprisoned not more than six years, or both.

18 U. S. C. 2385 provided during the relevant period:

§ 2385. Advocating overthrow of Government.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory,

District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

18 U. S. C. 371 provides:

§ 371. *Conspiracy to commit offense or to defraud United States.*

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

APPENDIX C

Analysis of the Court of Appeals' Comments on Specific Items of Evidence

(1) In discussing the evidence concerning the years 1952–1955, the court of appeals stated that the closest approaches to illegal advocacy during this period were "two statements by persons apparently unauthorized to speak for the conspiracy" (p. 30, *supra*). One of the persons whom the Court found unauthorized to speak was one Josephine Willard (pp. 30–31, *supra*). In making this determination, the court ignored evidence which not only showed that Willard was authorized to speak, but which in itself constituted evidence of illegal advocacy. The statement in question—that "the Communists would support the masses of people in any coun' y who were revolting to throw off the yoke of the capitalists and assist these people in establishing a democratic form of government" (pp. 30–31, *supra*)—was made at one of a series of classes instructed by respondent Ekins in January and February, 1953 (Tr. 6532–6533). This class was led by Willard, a long-time member of the Party's State Committee (Tr. 1612–1613, 4475, 6505, 5269–5270),[1] who made the statement in the presence of Ekins (Tr. 6535–36). In response to a question by Willard,

[1] Willard's other positions and activities in the Communist Party include: recruitment of witness Gay in 1943 (Tr. 1524); attendance at State Leadership School in 1947 (Tr. 5511, 5519); attendance at Party classes in 1941 (Tr. 6366–6367); chairmanship of the Party's Bridgeport City Committee in 1953 (Tr. 5163).

Ekins stated that the Communists would support a just war, which he defined as one in which the workers are trying to revolt and overthrow the yoke of capitalism (Tr. 6535). Later in the discussion, Willard stated that Communists will aid and guide the workers in this country who are trying to revolt and overthrow the yoke of capitalism and to form their own democratic government (Tr. 6536). Ekins stated that war between Communism and capitalism is inevitable, but "we Communists and Russia are not yet ready for war" (Tr. 6536). Then Ekins said that "when a just war breaks out, then we Communists will know that capitalism is on its way out" (Tr. 6536). In response to a student's question as to the necessity for peace organization when "we know that war is inevitable between Communism and capitalism," Ekins replied that it is "because we Communists are not yet ready for war" (Tr. 6536). Ekins later said, "[W]e Communists will aid and guide the workers in this country to fight for their freedom only when the workers are willing and able to fight for their freedom" (Tr. 6536). But, Ekins continued, "it was up to us Communists to see that they were ready and willing to fight for their freedom" (Tr. 6536). The court indicated no awareness of the conformity of these statements to Marxist theory, spelled out in the evidence, as to the appropriate time for the Party to make its bid for power (*e. g.*, Tr. 3457–3460), even though Ekins himself, conceding his knowledge of Marxist-Leninist writings, described them as the "Horse's Mouth," wherein all questions as to the interpretation of Party doctrine were resolved. See Judge Hincks' dissent, p. 54, *supra*, fn. 6.

(2) The court of appeals discussed a statement of respondent Goldring made to witness Gay during one of their daily meetings, during rest, lunch or regular

working hours, at the General Electric plant, where they both worked (p. 33, *supra*):

> He stated to me that the Communism in the United States could never be achieved through the use of the ballot; that the capitalistic system would never give up without a struggle, and that he agreed with the Marxist-Leninist theory that Communism would be achieved either through an internal revolution or through the conversion of the imperialist war into one of a revolutionary nature. * * *
>
> He stated that the Communist Party would be the leader, in the leadership in the changing of the character of an imperialist war.

The court dismissed this statement as (p. 33, *supra*)

> good proof of the specific intent of Goldring, but it is not an example of incitement. The speaker was expressing his personal prognostication as to the way communism would be achieved; he was not trying to convince his hearer, a personal friend, to use force and violence himself.

Witness Gay had been a member of the Party since 1943 (Tr. 1523–1524), and by the end of World War II was a member of the State Committee and State Executive Board and chairman of the State Youth Commission (Tr. 1612, 1620, 1627). Respondent Goldring had been a member of the Party since 1939 (Tr. 4863), and since 1946 had been a member of the State Committee (Tr. 1625).[2] In 1941, Goldring had attended classes in Marxism so as to be able to teach it to others. At the time the above-quoted statement was made, Goldring was using this instruction to guide Gay in his study and use of Marxist theory (Tr. 6369–6371). Although it is not mentioned in the

[2] Goldring had also been a Party officer in Bridgeport in 1941 (Tr. 6364).

court's opinion, Gay testified not only that he had heard other statements like Goldring's while he was in the Party, but that subsequently he heard other such statements by Goldring (Tr. 1843). That these statements by Goldring and other Party members in Gay's presence were effective is apparent from Gay's own testimony (Tr. 1884):

> Q. Did you ever at any time teach or advocate the necessity of overthrowing the Government of the United States by force and violence?
>
> A. I have made that statement, yes.

The long-time Party activity and leadership of Goldring, his eager participation in Marxist classes so as to be in a position to teach it to others, the other statements of a similar nature by Goldring and others in the Party, the relationship between the older and experienced Marxist, Goldring, and the comparative newcomer, Gay, and the statement of Gay as to his own teaching and advocacy are all relevant in connection with the question of whether Goldring's statement was inciting in nature. Apparently, the court of appeals gave no weight to these considerations, concluding that the relationship between Goldring and Gay was merely social. It is submitted that the jury, having been instructed as to the incitement requirement, could properly have considered the context of Goldring's statement and found that statement inciting.

(3). The court of appeals discussed a statement by Andrew Onda, State Chairman of the Connecticut Communist Political Association, made at a meeting of that group in New Haven in June 1945 (pp. 33–34, *supra;* Tr. 4451–2, 4457):

> * * * that Browder was guilty of revisionism, that Browder failed to look forward to the

> end of the war and the death of Roosevelt, and Browder had a plan for the slow gain of government control which was secretly undermining the United States Constitution by getting Party members into Government bureaus and offices where they could make drastic changes in the Government.* * *
>
> Well, Onda said that Browder, following such a policy, had revised Marxism and Leninism inasmuch as it contained no revolution and it left the Communists no longer the vanguard of the working class. He said that a revolution in the Communist sense meant sudden and violent death and seizure of the Government overnight; that Browder was accused of being too kind to the capitalists.
>
> He said that if Browder had figured correctly, he would have prepared the Party to fight Communists—Capitalism as soon as the aid of the capitalists was no longer needed.

The court commented on this evidence as follows (p. 34, *supra*):

> Inasmuch as the Connecticut leaders did not join the top national leaders to launch a new course for the Party until the national convention in New York, which was held subsequent to these remarks of Onda's, they cannot be presented as examples of the conspiracy in action. If anything, the proof to be discussed later would suggest that the Connecticut leader, Onda, learned at the national convention that he had overestimated the national leaders' shift from Browderism, and that the *Dennis* case group was not prepared to peddle ideas as inflammatory as those of Onda. In any event, Onda's quoted statement would appear to be an argument about the proper orthodox dogma, rather than an effort to incite hearers to take action against their government.

The conclusion of the court of appeals that Onda's remarks "cannot be presented as examples of the conspiracy in action" because they were made prior to the national convention is patently erroneous. The indictment charges a conspiracy from on or about April 1945. Onda's statements were made in June 1945. Prior to this time, in May 1945, Jacques Duclos, general secretary of the French Communist Party, had condemned the Communist Political Association's policy of class peace, and in June 1945 William Z. Foster and several other co-conspirators who were members of the National Board adopted a Draft Resolution criticizing Browderism and praising the Duclos article (p. 42, *supra;* Gov't. Ex. 1). Thus, the Onda statement not only was well within the indictment period, but was preceded by other authoritative statements of similar import.

Nor is there any basis in the record for the court's comment that the proof would suggest that Onda "learned at the national convention that he had overestimated the national leaders' shift from Browderism, and that the *Dennis* case group was not prepared to peddle ideas as inflammatory as those of Onda." If the court meant only that the *Dennis* group was not prepared to publicize openly such inflammatory ideas, it has support in the record. See, *e. g.,* defendant Resnick's withdrawal of his remarks after learning of the presence of a non-Party member (p. 35 *supra*). But if the statement of the court is to be taken at face value, it is impossible to reconcile with the court's own awareness of the "often recognized Communist conspiracy" (p. 22, *supra*) and its conclusion that the record would afford proof of "seditious conspiracy or conspiracy to commit insurrection or revolution" (p. 49, *supra*). In discussing the "peaceful approach" of the 1945 convention (p. 44, *supra*),

the court overlooks that at the national convention co-conspirator Dennis equated Marxism-Leninism with the dictatorship of the proletariat (Tr. 2931–2932), which, in Communist parlance, is the means of destroying the remaining vestiges of capitalism after the reins of Government are seized by forcible means. It appears that the majority below did not recognize what the Second Circuit clearly recognized earlier in *Dennis* (183 F. 2d 201, 229), namely, that certain words have an accepted conventional meaning among members of the Party.

Nor was weight given to Onda's subsequent promotion by the national leadership to the position of National Steel Coordinator for the Communist Party (Tr. 2425), an unlikely achievement for one out-of-step with the Party line, or to the support given Onda's attack on Browderism by Sol Kreas, another member of the State Committee (Tr. 4458; see Judge Hincks' dissent, p. 56, *supra*). Kreas stated (Tr. 4461):

> He said that he had been accused of being a Trotskyite when all the time his attitude of violence and revolution had been the correct one, that the Communists had gotten farther when they had met in cellars and called each other "comrade", and that the Communist Political Association had made the real revolutionists sick to their stomachs, that they wanted action, not a lot of talk, that didn't get them any place.

The court's comment that Onda's statement "would appear to be an argument about the proper orthodox dogma, rather than an effort to incite hearers to take action against their government", misconceives the purpose of the meeting and of Onda's statement. The principal discussion at the meeting concerned the Duclos letter and the June 1945 Draft Resolution

(Tr. 4458–4461). Onda made his statement with reference to both of these documents (Tr. 4458). By strongly criticizing Browder's revision of Marxism-Leninism, he was implicitly urging those present to reject Browderism and support the return to Marxism-Leninism contemplated in the Draft Resolution (Tr. 4458–4460). The Government contends that the jury could reasonably have concluded that Onda was urging members of the Communist Political Association to support the Draft Resolution and the return to Marxism-Leninism, which he equated with "sudden and violent death and seizure of the Government overnight." It is the Government's view that Onda, by his words, manifested his membership in the conspiracy, and that he was urging his hearers to join with him in effecting its object.

(4). The court discusses a statement by co-defendant Resnick at a Party meeting in March 1949 (p. 35, *supra*). At this meeting, the chairman, Priscilla Small, talked on Communist Party discipline (Tr. 5581). During the discussion, Resnick, in response to a question, stated that the Communist Party members should feel that they are the vanguard of the working class because they are a strongly organized group with Marxist-Leninist knowledge and that therefore they would have to lead the way to power (Tr. 5582). The group then discussed the use of Marxist terminology at Party meetings, one member objecting to the use of the "large terms" (Tr. 5582). Resnick stated that Marxist terminology should be used at Communist Party meetings (Tr. 5582). It was at this point that the following testimony quoted by the court was introduced (p. 35, *supra;* Tr. 5582–84):

> The other person present stated that he didn't feel it would be necessary to use revolutionary

> arms to achieve socialism in this country. However, if it were necessary he would certainly be willing to do so.
>
> Then Sidney Resnick told him that the capitalists would do anything, including arms, to prevent socialism in this country as they knew that socialism would crush them.
>
> Then Resnick stated that the Communist Party would have to use revolutionary arms to achieve socialism in this country, and he pointed out the example of how only Communism was achieved in Russia by revolution.
>
> * * * Priscilla Small interrupted Resnick and stated that he shouldn't forget that there was a potential new recruit present and that the new recruit might get the impression that he was advocating force and violence.
>
> * * * Resnick told Priscilla Small that the Communist Party would have to protect their political standing as a group from the capitalists who would be using force and violence against them and, therefore, they would have to use arms to protect themselves.

The court discounted Resnick's statement in the following words (pp. 35–36, *supra*):

> Passing the question whether Resnick's doctrine of the necessity of using arms in self-defense violates the Smith Act, the incident suggests that Resnick's effort to incite the use of force not only was unauthorized by the party leaders' secret agreement, but was directly contrary to it.

Not only was there sufficient evidence for a jury to find that Resnick's statement was authorized, but, in fact, the contrary inference of the court of appeals is totally unsupported. Despite the statement of the court that Resnick only "held very minor offices on a local level" (p. 35, *supra*), Resnick was, in fact, the Party's State Youth Director in 1949 (Tr. 5658),

a member of the State Committee in 1953, and a youth organizer in the same year (Tr. 6529). As a State leader of the Party, he appeared not only to take an active part in the discussion quoted above, but was guiding it (Tr. 5581–5584). Resnick's statement as to the necessity of using arms was made when a member expressed the opinion that the use of arms would not be necessary (Tr. 5583). It was then that Resnick, in a manner suggestive of a teacher guiding a student, made the statement quoted above, which conforms to Marxist-Leninist doctrine. The testimony makes clear that Resnick revised his statement only after being apprised by Priscilla Small of the presence of a non-Party member, a "potential new recruit" (Tr. 5584). Such caution was consistent with the increasingly circumspect attitude of the Party after the introduction of anti-Communist legislation in the Congress in 1946 and 1947, and particularly after the indictment of the *Dennis* defendants in 1948.

The court of appeals seems to recognize that Resnick's statement constituted an "effort to incite the use of force." Whether or not Resnick was inciting the use of force only in self-defense was certainly one for the properly instructed jury. In this connection, the jury might well have considered Resnick's agreement with a statement by one Lou Diskin that Communists all over the world would revolt in the event of a third World War against Russia (Tr. 5698, 5736); his activity in connection with taking the Communist Party and the Labor Youth League underground (Tr. 5699–5702); and his advice to Party members to deny present Party membership in the event the Mundt-Nixon Bill became law (Tr. 5701–5702).

(5). The court of appeals quoted the statement of a teacher at a school in 1947 sponsored by the Connecticut leadership of the Party (p. 38, *supra;* Tr. 5546–5547):

> Fascism could also be prevented * * * by the working class led by the Communist Party taking action at the proper time to overthrow the present system of government.

This statement was dismissed by the court as non-inflammatory innuendo that "overthrow" is desirable or inevitable (p. 38, *supra*).

While the statement quoted might perhaps be deemed innocuous when considered apart from the context in which it was uttered, the fact is, as the jury knew, that it was uttered at a Party school by one of the National Party's leading instructors (Tr. 5513). Its significance must also be considered in the light of the Party's iron discipline based on the principle of democratic centralism (Gov. Ex. 12, p. 198; Tr. 3151, 4633–4634). The teacher, George Siskind, had been the head of the 1938 National Training School (Tr. 2085–2093), and he also taught at the 1941 National Training School (Tr. 2607). He was introduced at the 1947 school by respondent Taylor (Silverman) as a representative of the National office of the Communist Party (Tr. 5513). Siskind also taught that preventing the offensive of capitalism and fascism depended, at least in part, upon the existence of a strong revolutionary Communist Party correctly leading the struggle (Tr. 5546).

The nature of the school at which Siskind made his remarks further indicates their inciting character. Joseph Roberts and Mike Russo, Party Chairman and Secretary, respectively, in Connecticut, also taught (Tr. 5543–5544). Marxist books such as *The History of the Communist Party of the Soviet Union,*

Foundations of Leninism, The Communist Manifesto, and *The Theory and Practice of the Communist Party* were used as texts (Tr. 5536–5537). Siskind told the students they should try to master the contents of these books, as their meaning was quite important (Tr. 5543). State Chairman Roberts taught that the Marxist readings were applicable to present conditions in this country, and that the students should apply what they had learned at the school to problems in Connecticut (Tr. 5548–5549).

It is submitted that the properly instructed jury could reasonably have found that the Marxist-Leninist books and the lectures at the school were guides to action for the Party leader-students. Cf. *Yates* v. *United States, supra,* 354 U. S. at 331–333.

(5) The court of appeals quoted the statement of respondent Stone to a non-Communist union steward whom she was trying to recruit. Upon being asked how far the Party would go in this country to attain their objectives, she stated (p. 32, *supra;* Tr. 5071): "Frankly, Amie, if necessary we will have bloodshed." The court commented that the listener was not being urged to bloodshed but was only being asked to join a group which would take such steps "if necessary" (p. 32, *supra*).

This statement of Stone's, however, must be evaluated in the light of all the other evidence concerning this respondent's activities. Stone was among approximately 40 students at the National Training School of the Communist Party, held from November 1938 to May 1939 (Tr. 2075, 2089). This school, headed by George Siskind (Tr. 2092) and taught by co-conspirators Foster, Flynn, Stachel, and Bittleman (Tr. 2109–2111), emphasized the revolutionary nature of the Communist Party. For example, Bittleman impressed upon the students the need for a well dis-

ciplined, highly organized Party, based on the fundamentals of Marxism-Leninism, which would be able to smash the rule of the capitalist class through their own government and set up in its place a new form of government, the dictatorship of the proletariat (Tr. 2169). Subsequently, in discussing this lecture, Stone expressed agreement with Bittleman (Tr. 2171–2174).

Stone's involvement in clandestine underground activities is shown by her Party name of "Comrade Ruth" (Tr. 5115–5116, 5287) and her guidance of the Concealed State Board (e. g., Tr. 5287). Furthermore, respondent Silverman stated that witness Kent was approved for membership on the Concealed State Board by the National Committee of the Party and particularly by Martha Stone, one of its members (Tr. 5266–5267).[3] At a special General Electric cell meeting in January 1953, she urged that more Party members get into the key departments in the shop, the maintenance department and the power plant (Tr. 5123). Stone knew that the power plant and other key departments were not particularly fertile fields for Communist proselytizing. The underground purpose of this activity did not have to be spelled out since Stone was talking to well-versed Party members, who were also aware of the danger in discussing Party aims during a period in which the Government was prosecuting would-be revolutionaries. It is submitted that Stone's "bloodshed" statement, her urging of Party members to concentrate on the power plant and other key departments in the General Electric plant, her long-time ranking Party positions, her

[3] Stone had previously been a chairman of the New Jersey State Communist Party (Tr. 6496) and a section organizer in Brooklyn (Tr. 2362).

participation in the National Training School, her direction of the Party's underground in Connecticut, and other Party activity, provided sufficient basis for the properly instructed jury to conclude that Stone was urging Party members to prepare to take revolutionary action when the time was ripe.

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